CLERK'S COPY.

151

77593

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 195

THE UNITED STATES OF AMERICA, PETITIONER

vs.

BANK OF NEW YORK AND TRUST COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JULY 1, 1935

CERTIORARI GRANTED OCTOBER 14, 1935

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 195

THE UNITED STATES OF AMERICA, PETITIONER

vs.

BANK OF NEW YORK AND TRUST COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

INDEX

	Original	Print
Proceedings in U. S. C. C. A., second circuit	1	1
Statement under rule 13	1	1
Record from D. C. U. S., Southern New York	3	2
Subpena	3	2
Complaint	4	2
Order to show cause	11	5
Affidavit attached to order to show cause	13	6
Exhibit A—Certified copy of Russian text of a document	19	9
Certified translation of Exhibit A	19	9
Exhibit B—Summons and complaint in New York Supreme Court suit	22	10
Notice of motion to dismiss bill of complaint	34	17
Bill of particulars, September 13, 1934	36	18
Certified copy of assignment, dated August 25, 1933	39	18
Exchange of letters, dated November 16, 1933	42	20
Bill of particulars, dated October 1, 1934	46	22
Exhibit A—Copy of order of the Supreme Court of New York, New York County, dated August 11, 1931	50	23
Exhibit B—Russian text of decrees, published April 20, 1918, December 1, 1918, March 7, 1919, and March 5, 1921	56	26
Certified translation of decree, published April 20, 1918	57	26
Certified translation of decree, published December 1, 1918	61	29
Certified translation of decree, published March 7, 1919	64	30
Certified translation of decree, published March 5, 1921	67	32

Record from D. C. U. S., Southern New York—Continued.	Original	Print
Affidavit of John C. Vedder, in opposition to complainant's motion for injunction	70	33
Exhibit 1—Order of Supreme Court of New York, New York County, dated April 18, 1933	74	35
Exhibit 2—Order of Supreme Court of New York, New York County, dated August 11, 1931	77	36
Exhibit 3—Summons and complaint in New York Supreme Court suit	77	36
Exhibit 4—Judgment of Supreme Court, New York County, dated August 22, 1934	78	37
Exhibit 5—Letter, dated August 18, 1934, to Defendant from United States attorney	96	45
Affidavit of Frederick B. Campbell, in opposition to complainant's motion for injunction	97	46
Exhibit A—Proof of claim	105	50
Exhibit B—Referee's report	111	53
Exhibit C—Referee's opinion	111	53
Affidavit of Valerian E. Greaves, in support of complainant's motion for injunction	149	72
Defendant's notice of filing documents, dated October 2, 1934	153	74
Affidavit of Frederick B. Campbell, attached to notice of filing of documents	154	74
Copy of proof of claim, attached to notice of filing documents	155	75
Document, dated September 24, 1934, attached to notice of filing documents	156	75
Document, dated April 29, 1922, attached to notice of filing documents	157	75
Answering affidavit of Edward J. Ennis	158	76
Exhibit A—Copy of proof of claim, attached to affidavit	164	79
Opinion, Coxe, J	164	80
Order and Decree	174	84
Petition and allowance of appeal	177	86
Assignment of errors	179	87
Citation [omitted in printing]	182	88
Stipulation as to record	183	88
Clerk's certificate [omitted in printing]	184	88
Opinion, Chase, J	185	
Dissenting opinion, Manton, J	193	
Decree	225	
Clerk's certificate	227	
Order allowing certiorari	228	89
Stipulation and addition to record	229	89

1 In United States Circuit Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA, COMPLAINANT-APPELLANT

against

BANK OF NEW YORK AND TRUST COMPANY, DEFENDANT-APPELLEE

Statement under rule 13

On August 22, 1934, the above-entitled suit was commenced by the complainant, United States of America, against the defendant, Bank of New York and Trust Company, by filing a verified bill of complaint in the District Court for the Southern District of New York and by the issuance of a subpoena.

On August 22, 1934, an order to show cause, supported by an affidavit, was signed, temporarily restraining defendant and requiring defendant to show cause on August 28, 1934, why complainant's motion for an injunction pendente lite should not be granted. On August 23, 1934, the defendant was served with a subpoena, a copy of the bill of complaint, and a copy of the order to show cause signed August 22, 1934.

On August 29, 1934, defendant served on complainant a notice of motion for an order dismissing the complaint for failure to state facts sufficient to constitute a cause of action.

2 Pursuant to notices of motions of the defendant served on the complainant and orders of the district court made thereon and filed on September 12, 1934, and October 1, 1934, complainant filed on September 13, 1934, and on October 1, 1934, verified bills of particulars of the bill of complaint. Argument was had on the motion to dismiss the complaint, and on the motion for an injunction pendente lite before Honorable Alfred C. Coxe, United States district judge, on October 4 and October 6, 1934.

In an opinion dated November 28, 1934, and filed November 30, 1934, Judge Coxe denied complainant's motion for an injunction pendente lite and granted defendant's motion to dismiss the complaint for insufficiency. On December 20, 1934, an order and decree was filed denying complainant's motion for an injunction pendente lite and granting defendant's motion to dismiss the complaint for insufficiency and suspending the operation of the order and decree until the determination of the appeal by the complainant. On December 22, 1934, the appeal was allowed.

3 In United States District Court

Subpoena

E 78/377

THE PRESIDENT OF THE UNITED STATES OF AMERICA TO BANK OF NEW YORK AND TRUST COMPANY:

GREETING: You are hereby commanded to appear before the Judges of the District Court of the United States of America for the Southern District of New York, in the Second Circuit, to answer a Bill of Complaint exhibited against you in the said Court in a suit in Equity, by United States of America and to further do and receive what the said Court shall have considered in this behalf. And this you are not to omit under the penalty on you of Two Hunderd and Fifty ($250) Dollars.

Witness, Honorable John C. Knox, Judge of the District Court of the United States for the Southern District of New York, on the 22nd day of August in the year One Thousand Nine Hundred and Thirty-four and of the Independence of the United States the One Hundred and Fifty-ninth.

MARTIN CONBOY,
United States Attorney, Solicitor for Complainant, U. S. Courts and P. O. Bldg., Park Row and Broadway, New York City.

CHARLES WEISER, *Clerk.*

4 The defendant is required to file its answer or other defense in the above cause in the Clerk's office on or before the twentieth day after service hereof, excluding the day of said service, otherwise the Bill aforesaid may be taken pro confesso.

[SEAL] CHARLES WEISER, *Clerk.*

In United States District Court, Southern District of New York

Equity E. 78/377

UNITED STATES OF AMERICA, COMPLAINANT

against

BANK OF NEW YORK AND TRUST COMPANY, DEFENDANT

Complaint

To the Honorable Judges of the District Court of the United States for the Southern District of New York:

The United States of America, by its attorney, Martin Conboy, United States Attorney for the Southern District of New York,

complains of the defendant herein and alleges on information and belief:

5 1. That the complainant herein is a corporation sovereign and body politic.

2. That the defendant was at all times hereinafter mentioned and now is a corporation organized and existing under and by virtue of the Banking Law of the State of New York, with its principal office and place of business at 48 Wall Street, Borough of Manhattan, City of New York, and is an inhabitant and resident of the Southern District of New York.

3. That the Moscow Fire Insurance Company of Moscow, Russia, at all the times hereinafter mentioned, with the exceptions hereinafter noted, was a corporation organized under the laws of the State of Russia, to transact the business of insuring against loss or damage by fire and was authorized by compliance with the requirements of the laws of the State of New York to transact such business in this State; that the said Insurance Company, as part of its compliance with the requirements of the laws of the State of New York, deposited with the Superintendent of Insurance as a fund out of which should be paid the claims of domestic creditors of said corporation, cash securities and other items of value.

4. That heretofore and in the latter part of 1917 and the early part of 1918, or thereabouts, the said Moscow Fire Insurance Company was by decrees of the Russian State, dissolved and all of its right, title, and interest and all the right, title, and interest of all of its stockholders in its property, including the deposit hereinbefore mentioned with the Superintendent of Insurance of the State of New York, were confiscated and appropriated by the said Russian State.

6 5. That heretofore and on or about April 18, 1933, the claims of domestic creditors to the said fund so deposited with the Superintendent of Insurance of the State of New York having been satisfied, the said Superintendent of Insurance, pursuant to an order of the Supreme Court of New York, New York County, directing that the said fund be released, paid, transferred, and delivered to the defendant as agent or depositary of the said Moscow Fire Insurance Company, said fund not to be withdrawn except upon the order of a court of competent jurisdiction, delivered to the defendant, and the defendant received from the said Superintendent of Insurance, the balance of said fund then consisting of cash, securities, and other assets described as follows:

	Par value
City of New York Corporate Stock, 3½%, 1941	$ 500.00
City of New York Corporate Stock, 3½%	30,000.00
City of New York Corporate Stock, 4%, 1955	368,000.00
City of New York Corporate Stock, 4%, 1956	385,000.00
City of New York Corporate Stock, 4%, 1955	215,000.00
United States of America—2nd Liberty Loan Converted 4¼%—1941 (Called for redemption Nov. 1927)	80,000.00
Cash	1,899.54
	1,080,399.54;

7 that the said fund or the avails thereof is now in the possession of the said defendants.

6. That on or about November 16, 1933, the Russian State assigned to the complainant, for a valuable consideration, all of its right, title, and interest in and to the cash, securities, and other assets constituting the balance of the aforesaid deposit, and also assigned to the complainant all the right, title, and interest of all Russian nationals in and to the aforesaid cash, securities, and other assets, and since November 16, 1933, the complainant has been and now is the sole and exclusive owner entitled to the immediate possession of the aforesaid cash, securities, and other assets now in the possession of the defendant.

7. That prior to the institution of this suit, complainant duly demanded of the defendant the said cash, securities, and other assets together with the interest, dividends, gains, and profits thereof but the defendant has refused to deliver the same or any part thereof to the complainant and continues wrongfully to withhold the same from the complainant and now wrongfully possesses the said cash, securities, and other assets or the avails thereof. That as to the complainant since November 16, 1933, the possession of said property by the defendant has been wrongful and the defendant still wrongfully detains the same from the complainant.

8. That by reason of the defendant's possession of the said cash, securities, and other assets received on or about April 18,
8 1933, pursuant to the aforesaid order of the State Supreme Court that the said cash, securities, and other assets would not be withdrawn except upon the order of a court of competent jurisdiction and by reason of the complainant's demand for the said cash, securities, and other assets and the increase and avails thereof and the proceeds thereof, and by reason of the defendant's wrongful refusal to deliver the same or any part thereof to the complainant, and by reason of the defendant's continuing to wrongfully withhold the same from the complainant, the defendant holds the same for the complainant as fiduciary and trustee for the complainant.

9. That the complainant has no complete, plain, and adequate remedy at law for the relief sought herein and therefore institutes this suit in equity.

Wherefore, the complainant prays:

(a) that a subpena issue to the defendant named herein commanding it to appear on a certain day and answer this bill of complaint and to abide by such orders and decrees as this court may make in the premises;

(b) that the defendant herein, its successors, officers, agents, attorneys, employees, or assignees, and all persons or corporations acting under their direction or in their behalf, be enjoined and restrained permanently and pending the determination of this suit from paying out or distributing to anyone other than this complainant any part of the said cash, securities, and other assets or the avails thereof.

9 (c) that the defendant be required by a decree of this Court to make a full, just and complete account under the direction of this Court, and to pay over to the complainant the aforesaid cash, securities, and other assets and the proceeds and avails thereof and all interest, dividends, gains, and profits as have accrued or arisen or have been earned or received therefrom by the defendant and all such gains or profits as would have accrued to the complainant but for the wrongful detention of said cash, securities, and other assets by the said defendant and all damages the complainant may have suffered or sustained thereby;

(d) that the complainant may have such other and further relief as the case may require and the court may deem just in the premises.

MARTIN CONBOY,

United States Attorney for the Southern District of New York, Attorney for Complainant, Office and P. O. Address, U. S. Courts and P. O. Building, Borough of Manhattan, City of New York.

10 [*Duly sworn to by Edward J. Ennis, jurat omitted in printing.*]

11 In United States District Court, Southern District of New York

[Title omitted.]

Order to show cause

On the annexed affidavit of Edward J. Ennis, Assistant United States Attorney in and for the Southern District of New York, sworn to on the 22nd day of August 1934 on the verified bill of complaint filed herein on the 22nd day of August 1934 and

It appearing to the satisfaction of this Court that the complainant is entitled to the relief demanded by the bill of complaint in this suit, and

It further appearing that in order to enable this Court to adjudicate the right of the complainant to the cash, securities, and other assets referred to in the complaint, and to effectively exercise its jurisdiction and enforce its judgment it is necessary and proper that the aforesaid cash, securities, and other assets remain in possession of the defendant pending the adjudication by this Court of the rights of the complainant, it is

Ordered that the defendant be and appear before this Court
12 at a Stated Term thereof for the hearing of motions to be held on the 28th day of August 1934 in Room 235 of the Old Post Office Building, in the City, County, and Southern District of New York, Borough of Manhattan, at the hour of 10:30 o'clock in the forenoon or as soon thereafter as counsel can be heard, then

and there to show cause, if any it has, why the defendant, its officers, agents, attorneys, employees, assignees, successors, and all persons or corporations acting under its direction, or in its behalf, or in privity with it or claiming so to act, should not be enjoined and restrained as prayed for in the said bill of complaint herein, and meanwhile let the defendant, its officers, agents, attorneys, employees, assignees, successors, and all persons or corporations acting under its direction, or in its behalf, or in privity with it or claiming so to act, be stayed, restrained, and enjoined from distributing any of the said cash, securities, and other assets pending the determination of this motion.

Let service hereof be made upon the defendant by service personally upon an officer or authorized agent of the defendant of a copy, which need not be certified, on or before August 22, 1934.

Dated, New York, N. Y., August 22, 1934.

HULBERT, *U. S. D. J.*

13 In United States District Court

[Title omitted.]

Affidavit attached to order to show cause

SOUTHERN DISTRICT OF NEW YORK, *ss:*

EDWARD J. ENNIS, being duly sworn, deposes and says:

1. That he is an Assistant United States Attorney for the Southern District of New York in charge of the above-entitled matter.

2. That the Moscow Fire Insurance Company of Moscow, Russia, at all the times hereinafter mentioned, with the exceptions hereinafter noted, was a corporation, organized under the laws of the State of Russia, to transact the business of insuring against loss or damage by fire and was authorized by compliance with the requirements of the laws of the State of New York to transact such business in this State; that the said Insurance Company, as part of its compliance with the requirements of the laws of the State of New York, deposited with the Superintendent of Insur-
14 ance as a fund out of which should be paid the claims of domestic creditors of said corporation, cash, securities, and other items of value.

3. That heretofore and in the latter part of 1917 and the early part of 1918, or thereabouts, the said Moscow Fire Insurance Company, by decrees of the Russian State, and particularly by a decree of the Russian State on the organization of the insurance business in the Russian Republic, a photostatic copy of a certified copy of which and a copy of a certified translation of which are attached hereto and made a part hereof, was dissolved and all of its right, title, and interest and all the right, title, and interest of all of its stockholders in its property, including the deposit hereinbefore men-

tioned with the Superintendent of Insurance of the State of New York, were confiscated and appropriated by the said Russian State.

4. That heretofore and on or about April 18, 1933, the claims of domestic creditors to the said fund so deposited with the Superintendent of Insurance of the State of New York having been satisfied, the said Superintendent of Insurance, pursuant to an order of the Supreme Court of New York, New York County, directing that the said fund be released, paid, transferred, and delivered to the defendant as agent or depositary of the said Moscow Fire Insurance Company, said fund not to be withdrawn except upon the order of a court of competent jurisdiction, delivered to the defendant, and the defendant received from the said Superintendent of In-
15 surance, the balance of said fund then consisting of cash, securities, and other assets described as follows:

	Par Value
City of New York Corporate Stock 3½% 1941	$500.00
City of New York Corporate Stock 3½% 1949	30,000.00
City of New York Corporate Stock 4% 1955	368,000.00
City of New York Corporate Stock 4% 1956	385,000.00
City of New York Corporate Stock 4% 1955	215,000.00
United States of America—2nd Liberty Loan Converted 4¼%—1942 (Called for redemption Nov. 1927)	80,000.00
Cash	1,899.54
	1,080,399.54;

that the said fund or the avails thereof is now in the possession of the said defendant.

5. That on or about April 19, 1933, a suit entitled "Moscow Fire Insurance Company of Moscow, Russia, et al. against Bank of New York and Trust Company, et al.", was commenced in the Supreme Court of New York, New York County, and the complaint therein, a copy of which is attached hereto and made a part hereof, prayed judgment to determine the disposition of the aforesaid chattels, cash, securities, and other assets, and to determine the claims
16 of certain creditors and to authorize and direct conservators to pay to the stockholders of the Moscow Fire Insurance Company, their executors and assigns, outside of Russia, on account of their respective ratable interests in the said chattels, cash, securities, and other assets, such amounts as the Court shall determine therein; that hearings have been conducted before a Referee appointed to hear and determine the issues presented in the said suit in the Supreme Court of New York and proofs of claims of various creditors and the stockholders of the Moscow Fire Insurance Company have been submitted to the said Referee.

6. That on or about November 16, 1933, the Russian State assigned to the complainant, for a valuable consideration, all of its right, title, and interest in and to the cash, securities, and other assets constituting the balance of the aforesaid deposit, and also assigned to the complainant all the right, title, and interest of all Russian nationals in and to the aforesaid cash, securities, and other assets, and since November 16, 1933, the complainant has been

and now is the sole and exclusive owner entitled to the immediate possession of the aforesaid cash, securities, and other assets now in the possession of the defendant.

7. That on August 9, 1934, deponent attended a hearing before Referee James F. Donnelly, appointed by the Supreme Court to hear and determine the issues in the said suit pending in the Supreme Court of the State of New York, and was informed by the Referee that the defendant Bank of New York and Trust Company
17 held in its possession about $1,100,000 in cash, securities, and other assets formerly belonging to the Moscow Fire Insurance Company and that the Referee was about to sign and file a report in the said suit in the Supreme Court of the State of New York recommending for allowance the aforesaid claims of creditors and shareholders of the Moscow Fire Insurance Company, and recommending distribution of the said chattels, cash, securities, and other assets to the said creditors and stockholders.

8. That on August 14, 1934, deponent attended a hearing before the Referee and was informed by the Referee that the Referee would continue to prepare his report, but would not sign it or file it in the Supreme Court prior to August 21, 1934, but that it would be filed at that time recommending distribution of the assets as aforesaid.

9. That upon the filing of the said report and recommendations the parties claimants in the aforesaid suit in the Supreme Court of New York intend to and are about to make a motion in the Supreme Court of New York for an order confirming the report of the said Referee allowing the claims of the parties claimants and ordering distribution of the said securities and assets by the defendant herein.

10. That prior to the institution of this suit, complainant duly demanded of the defendant the said cash, securities, and other assets, together with the interest, dividends, gains, and profits thereof, but the defendant has refused to deliver the same or any part thereof to the complainant.

18 11. That no application has been made to any court or judge for the relief prayed herein or for similar relief.

Wherefore, deponent makes this affidavit in support of an order to show cause why the defendant should not be enjoined and restrained permanently and pending the determination of this suit from paying out or distributing to anyone other than this complainant any part of the said cash, securities, and other assets or the avails thereof.

EDWARD J. ENNIS.

Sworn to before me this 22nd day of August 1934.

[SEAL] ARMAND CHANKALIAN,
Notary Public, New York Co.

Clerk's No. 347, Reg. No. 5C463.
Commission expires March 30, 1935.

19 *Exhibit A to affidavit*

Certified copy of Russian text of a document, a certified translation of which follows attached to affidavit verified August 22, 1934.

CERTIFIED TRANSLATION OF EXHIBIT A, ATTACHED TO AFFIDAVIT, VERIFIED AUGUST 22, 1934

[Copy]

Source: Collection of Decrees and Orders on National Economy (October 25, 1918–March 15, 1919) Volume Two. Published by the Supreme Soviet of National Economy of the Russian Socialist Federated Soviet Republic, Moscow, 1920. Pages 720, 721

Decree of the Soviet of People's Commissars 603. On the organization of the insurance business in the Russian Republic.

(1) Insurance in all its forms, such as: fire insurance, insurance on shipments, life insurance, accident insurance, hail insurance, livestock insurance, insurance against failure of crops, etc., is hereby proclaimed as a State monopoly.

NOTE.—Mutual insurance of movable goods and merchandise by the cooperative organizations is conducted on a special basis.

(2) All private insurance companies and organizations
20 (stock and shareholding, also mutual) upon issuance of this decree are subject to liquidation former rural [1] (People's Soviet) and municipal mutual insurance organizations operating within the boundaries of the Russian Republic are hereby proclaimed the property of the Russian Socialist Federated Soviet Republic.

(3) For the immediate organization of the insurance business and for the liquidation of insurance institutions which have become the property of the Russian Socialist Federated Soviet Republic, a Commission is established under the Supreme Soviet of National Economy, consisting of representatives of the Supreme Soviet of National Economy, the People's Commissariats of Commerce and Industry, Interior Affairs, the Commissar of Insurance and Fire Prevention, Finances, Labor, and State Control, and of Soviet Insurance Organizations (People's Soviet and Municipal Mutual).

NOTE.—The same Commission is charged with the liquidating of private insurance organizations, all property and assets of which, disclosed at the time of their liquidation, become the property of the Russian Socialist Federated Soviet Republic.

[1] zemskie.

(4) The above-mentioned reorganization and liquidation of existing insurance organizations and institutions shall be accomplished not later than the first day of April 1919.

21 (5) The Commissariat of Insurance and Fire Prevention, together with all its institutions, is reorganized into the Insurance Department of the Supreme Soviet of National Economy. The matter of fire prevention is transferred to the Supreme Soviet of National Economy.

(6) No Soviet properties and enterprises are subject to insurance.

(7) Life insurance with the State Savings Banks is conducted upon the former basis.

(8) The present decree comes into force on the day of its publication.

(Signed) V. ULYANOV (Lenin),
Chairman of the Soviet of People's Commissars.
V. BONCH-BRUEVICH,
Administrator of Affairs of the Soviet of People's Commissars.

("Izvestiya of the All-Russian Central Executive Committee of Soviet", December 1, 1918, No. 263.)

[Translator's Note.] I hereby certify that the above translation is conformable with the attached original to the best of my knowledge.

(Signed) IGNATIUS JAWNEY,
Principal Translator, Department of State, Appointed Translator, January 1928.

Russian.
Tr. IJ : MW : SS.

22 *Exhibit B*

Summons and Complaint in New York Supreme Court suit attached to affidavit verified August 22, 1934.

Supreme Court, New York County

Summons

MOSCOW FIRE INSURANCE COMPANY OF MOSCOW, RUSSIA, AND PAUL Lucke, as sole surviving director of Moscow Fire Insurance Company of Moscow, Russia, and Conservator of its property, plaintiffs

against

BANK OF NEW YORK AND TRUST COMPANY, AS AGENT OR DEPOSITARY of said Moscow Fire Insurance Company of Moscow, Russia, and of the said Paul Lucke as surviving director and conservator; Assecuranz Union von 1865; Carl Otto von Hollitscher and Paul F. Gottlieb, co-partners, transacting business under the firm name and style of Heckscher & Gottlieb; Bertram Ayman Cater; Georg J. Fahrbach; Vladimir A. Miller; Michael Imchanitzky; and Fedor R. Amlong, Carl R. Amlong, Maria G. Arnaud, Alice F. Assmus [and 143 other named defendants], as stockholders of Moscow Fire Insurance Company of Moscow, Russia, on behalf of themselves and all other stockholders similarly situated of said Moscow Fire Insurance Company of Moscow, Russia, defendants

To the Above-Named Defendants:

You are hereby summoned to answer the complaint in this
23 action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiffs' attorneys within twenty days after the service of this summons, exclusive of the date of service; and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Dated April 19, 1933.

CAMPBELL & WHIPP,
Attorneys for Plaintiffs, Office & P. O. Address, No. 20 Exchange Place, Borough of Manhattan, New York City.

24 Supreme Court, New York County

Complaint

MOSCOW FIRE INSURANCE COMPANY OF MOSCOW, RUSSIA, AND PAUL Lucke, as sole surviving director of Moscow Fire Insurance Company of Moscow, Russia, and Conservator of its property, plaintiffs

against

BANK OF NEW YORK AND TRUST COMPANY, AS AGENT OR DEPOSITARY OF said Moscow Fire Insurance Company of Moscow, Russia, and of the said Paul Lucke as surviving director and conservator; Assecuranz Union von 1865; Carl Otto von Hollitscher and Paul F. Gottlieb, co-partners, transacting business under the firm name and style of Heckscher & Gottlieb; Bertram Aymar Cater; Georg J. Fahrbach; Vladimir A. Miller; Michael Imchanitzky; and Fedor R. Amlong, Carl R. Amlong, Maria G. Arnaud, Alice F. Assmus [and 143 other named defendants], as stockholders of Moscow Fire Insurance Company of Moscow, Russia, on behalf of themselves and all other stockholders similarly situated of said Moscow Fire Insurance Company of Moscow, Russia, defendants

The plaintiffs above named, by their attorneys, Campbell & Whipp, for their complaint herein allege as follows:

1. The plaintiff Moscow Fire Insurance Company of Mos-
25 cow, Russia, is a corporation of the former Empire of Russia. The defendant Bank of New York and Trust Company is a domestic corporation organized under the Banking Law of the State of New York, with its principal office in the State and County of New York. The defendant Assecuranz Union von 1865, of Cologne, Germany, is a corporation of Germany.

2. By an order of this Court dated and entered August 11, 1931, in a proceeding entitled "Matter of the Application of the People of the State of New York, by James A. Beha, as Superintendent of Insurance, for an order to take possession of the property of Moscow Fire Insurance Company of Moscow, Russia", which order was entered pursuant to a decision of the Court of Appeals, it was provided, among other things, as an alternative to the giving of a surety company bond as therein specified, that the Superintendent of Insurance of the State of New York, as liquidator of the plaintiff Moscow Fire Insurance Company of Moscow, Russia, upon being notified that the said Moscow Fire Insurance Company elected not to furnish the said bond, should release, pay, transfer, and deliver the surplus assets of said Moscow Fire Insurance Company to Bank of New York and Trust Company, of No. 48 Wall Street, New York City, as the agent or depositary of the plaintiff Moscow Fire Insurance Company and of the plaintiff Paul Lucke as surviving director and conservator of the property thereof, upon the filing with the clerk of this court of a written stipulation of the plaintiff Moscow Fire

Insurance Company and of the plaintiff Paul Lucke as such surviving director and conservator, that such surplus assets or fund would not be withdrawn except upon the order of a court of competent jurisdiction.

3. Thereafter the plaintiff Paul Lucke on behalf of the plaintiff Moscow Fire Insurance Company and of himself as such conservator, duly notified the said Superintendent of Insurance as such liquidator aforesaid that said Moscow Fire Insurance Company and he the said conservator elected not to furnish the said bond provided in the said order of August 11, 1931, but, in lieu thereof, elected the alternative provided in said order, to wit: that the said Superintendent of Insurance as said liquidator aforesaid should release, pay, transfer, and deliver the surplus assets of the plaintiff Moscow Fire Insurance Company to the defendant Bank of New York and Trust Company as the agent or depositary of the plaintiff Moscow Fire Insurance Company and of the plaintiff Paul Lucke as surviving director and conservator; and the plaintiffs Moscow Fire Insurance Company and Paul Lucke as its sole surviving director and conservator of its property further duly filed with the Clerk of this Court, as in said order of August 11, 1931, provided, a written stipulation of said plaintiffs that said surplus assets or funds would not be withdrawn except upon the order of a court of competent jurisdiction.

4. On the 18th day of April 1933 the Superintendent of
27 Insurance as liquidator of the plaintiff Moscow Fire Insurance Company released, paid, transferred, and delivered to defendant Bank of New York and Trust Company and to the plaintiff Paul Lucke as such conservator, the following described surplus assets or funds of the plaintiff Moscow Fire Insurance Company,

	Par Value	Approximate Market Value
City of New York Corporate Stock 3½% 1941	$500.00	$325.00
City of New York Corporate Stock 3½% 1949	30,000.00	19,500.00
City of New York Corporate Stock 4% 1955	368,000.00	257,600.00
City of New York Corporate Stock 4% 1956	385,000.00	269,500.00
City of New York Corporate Stock 4% 1955	215,000.00	150,500.00
U. S. of America—2nd Liberty Loan—Converted 4¼% 1942 (Called for redemption Nov. 1927)	80,000.00	80,000.00
Cash	1,899.54	
Total cash and par value of securities	1,080,399.54	

and the defendant Bank of New York and Trust Company now holds the same as the agent or depositary of the plaintiffs.

5. The plaintiff Paul Lucke residing at Paris, France, is the sole surviving member of the board of directors of the plaintiff Moscow Fire Insurance Company, as well as a shareholder in said company. The said plaintiff has been in the service of the said Moscow Fire Insurance Company since 1886; has been manager thereof
28 since 1895, and has been sole managing director since 1907.

Subsequent to the Russian revolution the plaintiff Paul Lucke from outside of Russia has administered the affairs of said company

and conserved its property outside of Russia, and taken proceedings to release and recover its funds and securities in the United States. By reason of the Russian revolution and the decrees and acts of the present Soviet regime of Russia, the plaintiff Moscow Fire Insurance Company is unable, within Russia, the country of its domicile, to perform any of its corporate functions or to carry on its business.

6. The following-named defendants are creditors of the plaintiff Moscow Fire Insurance Company in the amounts indicated: Assecuranz Union von 1865, of Cologne, Germany, balance of account due on contract of reinsurance as adjusted, $6,043.85; Carl Otto von Hollitscher and Paul F. Gottlieb, copartners, transacting business under the firm name and style of Heckscher & Gottlieb, of Berlin, Germany, commissions earned on fire reinsurance treaty business negotiated and managed with the Royal Insurance Company of Liverpool, and other companies, and also for other services as adjusted, $30,000; Betram Aymar Cater, of London, England, services and disbursements as representative of Moscow Fire Insurance Company in connection with negotiations and management of the reinsurance business in London of said Moscow Fire Insurance Company and the closing of its English branch, as adjusted, $21,000; George I. Fahrbach, of Riga, Latvia, for moneys deposited with Moscow Fire Insurance Company, as adjusted, $5,600; Vladimir A. Miller, of Paris, France, legal services and disbursements as Russian counsel in connection with the liquidation of the affairs of the Moscow Fire Insurance Company both in Europe and in the United States covering a period of twelve years, as adjusted, $34,975.82; Michael Imchanitzky, of New York City, legal services and disbursements as Russian counsel from August 11, 1931, in connection with the closing of the liquidation of the U. S. branch of said Moscow Company, as adjusted, $8,000.

7. The total number of shares of the plaintiff Company issued and outstanding at the time of the Russian revolution aggregate 10,000, each share having a par value of two hundred (200) rubles in the former Russian Imperial currency. The defendants other than the defendant Bank of New York and Trust Company and other than the creditor defendants mentioned in the preceding paragraph are or were shareholders of the plaintiff Company who left Russia subsequent to the Russian revolution or the executors, administrators or next of kin outside of Russia of deceased shareholders, or the assigns of such persons. Such defendants are all of such described shareholders, their executors, administrators, or next of kin, known to the plaintiff Paul Lucke or that he has been able to ascertain by diligent inquiry. Such defendants are joined as parties defendants in this action as representative not only of their own interests and of the interests of such deceased shareholders but as representative of the interests of all shareholders of the plaintiff company, their executors, administrators, or next of kin who reside outside of the territorial jurisdiction of the present Russian Soviet regime.

8. The plaintiff Paul Lucke is the sole surviving director of the plaintiff Moscow Fire Insurance Company. As such sole surviving director he is the sole conservator of the Company's property now within the jurisdiction of this Court as heretofore set forth. Because of the uncertainty of human life and because of the nature and manner of the disposition and conservation of such property, it is desirable that co-conservators familiar with the affairs of the Company and with the shareholders thereof, their executors, administrators, and next of kin, should be associated with the plaintiff Paul Lucke in the conservation and disposition of the said property. In the case of another Russian insurance company, the Russian Reinsurance Company, where the surviving directors exist to the number of a quorum, three, of such directors, of which company the plaintiff Paul Lucke is one of such surviving directors, the courts of this State have decided that the solution of the question of the conservation and disposition of the company's property similarly situated, was to direct that such property be delivered to such quorum of directors. The only difference in the case of the instant Company is that here there exists but a single surviving director, the plaintiff Paul Lucke.

31 9. The plaintiff Paul Lucke therefore after conference with many of the defendant shareholders of the plaintiff Company or their executors, administrators or next of kin and with their consent and approval, suggests to the Court the appointment as associate or co-conservators of the said property, with the plaintiff Paul Lucke, the following named persons to act with said plaintiff in the proper conservation and disposition thereof: Percy V. Roepenack, formerly of Moscow, Russia, now residing in Berlin, Germany; Carl R. Amlong, formerly of Moscow Russia, now residing in Berlin, Germany; Carl Otto von Hollitscher, of Berlin, Germany, and of Louis Simmler, of Paris, France. The said Percy V. Roepenack and Carl R. Amlong are representatives of groups of the owners of many shares of the plaintiff Company, and are well and favorably known to the shareholders or their representatives. The said Carl Otto von Hollitscher has long been a member of the firm of Heckscher & Gottlieb, of Berlin, Germany, which firm has for many years acted as the representatives of the plaintiff Company in Germany and in the transaction of much of its business outside of Russia and in the United States, and is familiar with the affairs of the Company and knows and is well and favorably known to those interested therein. The said Louis Simmler is an officer and director of Banque Internationale de Commerce, of Paris, France, and is familiar with the affairs of the Company and knows and is likewise well and favorably known to those interested therein.

32 10. The plaintiff Paul Lucke has rendered long, continuous, and difficult services in the management of the affairs of the plaintiff company and the conservation of its property, for which he has not been paid.

Wherefore, the plaintiffs ask judgment as follows:

1. That there may be determined the disposition of the funds and securities hereinbefore specified.

2. That the claims of the defendant creditors may be determined by the Court and that the plaintiff Paul Lucke as conservator of the plaintiff Company shall be authorized and directed to pay the same as so determined.

3. That the compensation to which the plaintiff Paul Lucke is individually entitled for his services shall be determined, together with his disbursements, including the compensation of plaintiff's attorneys since August 11, 1931, the date of the entry of the order of this court upon the remittitur of the Court of Appeals in the proceedings hereinbefore set forth, and that the plaintiff Paul Lucke as conservator of the plaintiff Company shall be authorized and directed to pay the same as so determined.

4. That there may be designated to act as co-conservators with the plaintiff Paul Lucke in connection with the future disposition
33 and conservation of the property of the plaintiff Moscow Fire Insurance Company, the following named persons, with such powers and authority as the Court shall determine: Percy C. Roepenack, now residing at Berlin, Germany; Carl R. Amlong, now residing at Berlin, Germany; Carl Otto von Hollitscher, of Berlin, Germany; and Louis Simmler, of Paris, France.

5. That the plaintiff Paul Lucke and the co-conservators above named be authorized and directed to pay to the shareholders of the plaintiff Company, their executors, administrators, or next of kin, outside of Russia, on account of their respective ratable interests in the balance of the funds and securities hereinbefore specified, such amount as the Court shall determine.

6. And for such other, further, or different relief as may be determined to be proper, together with the costs, expenses, and disbursements of this action.

CAMPBELL & WHIPP,
Attorneys for Plaintiff,
20 Exchange Place, Borough of Manhattan, New York City, N. Y.

STATE OF NEW YORK,
County of New York, ss:

PAUL LUCKE, being duly sworn, deposes and says that he is one of the plaintiffs in the above entitled action; that the foregoing
34 complaint is true of his own knowledge except as to the matters which are therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

PAUL LUCKE.

Sworn to before me this 19th day of April 1933.

L. D. BATES,
Notary Public, Kings County.

Clerk's No. 479A, Register's No. 4598.
N. Y. Co. Clk's No. 1512, Reg. No. 5B73.
Queens Co. Clk's No. 1317, Reg. No. 5133.
Commission Expires March 30, 1934.

In United States District Court, Southern District of New York

[Title omitted.]

Notice of motion to dismiss bill of complaint

Now comes the defendant Bank of New York and Trust
35 Company, by Emmet, Marvin & Martin, its attorneys, Frederick B. Campbell, of counsel, and gives notice that upon the bill of complaint herein the defendant will move this Court at a stated term for motions thereof on September 4, 1934, at 10:30 a. m., or as soon thereafter as counsel can be heard, for an order dismissing the bill of complaint herein upon the ground that said complaint fails to state facts sufficient to constitute a cause of action, and for such other, further, and different relief to which defendant may be entitled.

New York, N. Y., August 29, 1934.

BANK OF NEW YORK AND TRUST COMPANY,
By EMMET, MARVIN & MARTIN,
Its Attorneys.
FREDERICK B. CAMPBELL,
Of Counsel.

To MARTIN CONBOY, Esq.,
United States Attorney, Attorney for Complainant,
U. S. Courts and P. O. Building,
Borough of Manhattan, New York City.

36 In United States District Court, Southern District of New York

[Title omitted.]

Bill of particulars, dated September 13, 1934

The complainant, in response to the order of this Court on the 12th day of September 1934 providing as follows:

"Ordered, that the complainant herein serve upon the attorneys for the defendant herein a verified bill of particulars, on or before the 13th day of September 1934, stating the particulars of the assignments referred to in paragraph numbered 6 of the bill of complaint herein, stating whether such assignments were oral or in writing, and by whom made on the part of the Russian State, and if in writing, to attach a complete copy of such assignments."

herewith respectfully complies with the said order and states that the assignments referred to in paragraph 6 of the bill of complaint herein are written assignments, photostatic copies of certified copies of which are annexed hereto, described as follows:

37 (1) A written assignment by the State of Russia to the United States, dated August 25, 1933, and signed by Serge Russian Financial Attache and Custodian of the property of the Russian Government in the United States, acting for and on behalf of the State of Russia.

(2) An exchange of letters dated November 16, 1933, between the President of the United States and Maxim Litvinoff, People's Commissar for Foreign Affairs, Union of Soviet Socialist Republics.

Dated, September 13th, 1934.

MARTIN CONBOY,
United States Attorney, Southern District of New York, Attorney for Complainant, Office and P. O. Address, U. S. Courts and P. O. Bldg., Broadway and Park Row, Borough of Manhattan, City of New York.

38 [*Duly sworn to by Edward J. Ennis, jurat omitted in printing.*]

39 *Certified Copy of Assignment, dated August 25, 1933*

Know All Men by These Presents that I, the undersigned, Serge Ughet, as Russian Financial Attache and Custodian of the Property of the Russian Government in the United States, acting for and on behalf of the State of Russia, for and in consideration of good and valuable considerations by the United States of America to the State of Russia paid, the receipt of which is hereby acknowledged, have assigned, transferred, set over, and delivered and by these presents do assign, transfer, set over, and deliver unto the United States of America, its successors and assigns, to its and their own proper use and benefit forever, all property, of whatsoever nature and description, in the United States belonging to the State of Russia, together with all claims and demands of every nature and description, whether legal or equitable, existing in favor of the State of Russia in the

United States, or against any person, firm, or corporation in the United States, or arising out of any contract or agreement or transaction in the United States or otherwise, including therein among others the following property and claims:

(1) Claim for approximately $4,976,722.78 with interest for a balance of the Russian Government with the Guaranty Trust Company of New York.

(2) Claim for approximately $15,000.00 against the Guaranty Trust Company of New York arising out of a contract with the Morton Truck and Tractor Company.

(3) Claim for approximately $46,584.18 balance on deposit
40 with the New York Trust Company on account of a bond issue of the Vladikavkas Railway Company.

(4) Claim for approximately $11,680.00 against the said New York Trust Company on account of a balance of a payment made by the Russian Financial Attache on or about September 10, 1918, in connection with the same bonds.

(5) Claim for approximately $140,000.00 against the National City Bank of New York on account of a payment made to the said bank regarding certain shoes ordered for working men and employees of the Vladikavkas Railway Company.

(6) Claim for approximately $1,050,000.00 with interest against the Curtiss Aeroplane & Motor Company.

(7) Claim for approximately $384,118.07 with interest for moneys due from the Canadian Pacific Railway Company under contracts with the Russian Government.

(8) Claim for approximately $1,412,532.35 with interest on account of the amounts due by the United States Shipping Board for the requisition of Hulls Nos. 6 and 7 of the Russian Volunteer Fleet, action in connection with which is now pending in the United States Court of Claims No. 69 A.

(9) Claim for the sum of approximately $218,750.00 originally deposited with the Guaranty Trust Company as escrow money on Hull No. 6 under the contract for the purchase of said hull by the said Russian Volunteer Fleet.

(10) Claim for the sum of approximately $23,643.75 on ac-
41 count of a balance due by the United States Shipping Board in connection with the charter of certain steamers of the said Russian Volunteer Fleet.

The foregoing list of claims is not intended to be exclusive. It is the intention of this assignment to transfer to the United States of America all property, rights, and claims having a situs in the United States formerly belonging to either the Imperial Russian Government or the Provisional Russian Government.

Excluding from this assignment, however, the right, title, and interest of the said State of Russian in and to the claim, demand, or

cause of action involved in the pending suit in equity in the United States District Court for the Southern District of New York, No. E 46–6, entitled "State of Russia, plaintiff, against Bankers Trust Company and National City Bank of New York, defendants."

IN WITNESS WHEREOF the said Serge Ughet as Russian Financial Attaché and Custodian of the property of the Russian Government in the United States, acting for and on behalf of the State of Russia, has hereunto set his hand and seal this 25th day of August, 1933.

[SEAL] (Signed) SERGE UGHET,

As Russian Financial Attaché and Custodian of the property of the Russian Government in the United States, acting for and on behalf of the State of Russia.

FINANCIAL ATTACHÉ TO THE RUSSIAN EMBASSY IN WASHINGTON.

42 *Exchange of Letters, dated November 16, 1933*

WASHINGTON, *November 16, 1933.*

MY DEAR MR. PRESIDENT: Following our conversations I have the honor to inform you that the Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counter claims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due, as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment.

The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above, not to make any claim with respect to:

(a) judgments rendered or that may be rendered by American courts insofar as they relate to property, or rights, or interests therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or,

43

(b) acts done or settlements made by or with the Government of the United States, or public officials in the United States, or its

nationals, relating to property, credits, or obligations of any Government of Russia or nationals thereof.

I am, my dear Mr. President,

Very sincerely yours,

MAXIM M. LITVINOV,
People's Commissar for Foreign Affairs,
Union of Soviet Socialist Republics.

MR. FRANKLIN D. ROOSEVELT,
President of the United States of America,
The White House.

THE WHITE HOUSE,
Washington, November 16, 1933.

MY DEAR MR. LITVINOV: I am happy to acknowledge the receipt of your letter of November 16, 1933, in which you state that:

44 "The Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counter claims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment.

"The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above, not to make any claim with respect to:

"(a) judgments rendered or that may be rendered by American courts in so far as they relate to property, or rights, or interests therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or,

"(b) acts done or settlements made by or with the Government of the United States, or public officials in the United States, or its nationals, relating to property, credits, or obligations of any Government of Russia or nationals thereof."

I am glad to have these undertakings by your Government and I shall be pleased to notify your Government in each case of any

amount realized by the Government of the United States from the release and assignment to it of the amounts admitted to be due, or that may be found to be due, the Government of the Union of Soviet Socialist Republics, and of the amount that may be found to be due on the claim of the Russian Volunteer Fleet.

I am, my dear Mr. Litvinov,

Very sincerely yours,

FRANKLIN D. ROOSEVELT.

Mr. MAXIM M. LITVINOV,
People's Commissar for Foreign Affairs,
Union of Soviet Socialist Republics.

46 In United States District Court, Southern District of New York

[Title omitted.]

Bill of particulars, dated October 1, 1934

The complaint, in response to the order of this Court of the 1st day of October 1934, providing as follows:

"Ordered, that the complainant herein serve forthwith upon the defendant's solicitors a bill of particulars of the allegations of the bill of complaint, in the following respects:

"1. Setting forth a copy (which need not be certified) of the order referred to in paragraph 5 of the complaint as 'an order of the Supreme Court of New York, New York County.'

"2. Setting forth copies of the 'decrees of the Russian State' and the date or dates thereof, referred to in paragraph 4 of the complaint; provided that such decrees as furnished on this bill of
47 particulars be without prejudice to the complainant herein, offering as part of its proof, in the event of a trial, any other decrees upon giving reasonable notice to the solicitors for the defendant.

"3. Stating what government or regime in or of Russia is intended to be referred to by the term 'Russian State' as contained in paragraphs 4 and 6, respectively, of the complaint."

herewith respectfully complies with the said order and states:

(1) That the order of the Supreme Court of New York, New York County, referred to in paragraph 5 of the complaint is an order dated August 11, 1931, a copy of which is attached hereto.

(2) That the decrees of the Russian State referred to in paragraph 4 of the complaint are decrees published April 20, 1918, December 1, 1918, March 7, 1919, and March 5, 1921, copies of which and translations of which are attached hereto, and any other decrees which the complainant may offer as part of its proof in the event of a trial upon giving reasonable notice to the solicitors for the defendant.

(3) That the Government or Regime in or of Russia intended to be referred to by the term "Russian State" in paragraphs 4 and 6 of the complaint is the Government which has been recog-
48 nized by the United States by its political departments as having been sovereign in Russia since 1917.

Dated, October 1, 1934.

MARTIN CONBOY,
United States Attorney, Southern District of New York, Attorney for Complainant, Office and P. O. Address, U. S. Courts and P. O. Building, Broadway and Park Row. Borough of Manhattan, City of New York.

49 [*Duly sworn to by Edward J. Ennis, jurat omitted in printing.*]

50 *Exhibit A*

Copy of the order of the Supreme Court of New York, New York County, dated August 11, 1931, attached to Bill of Particulars, dated October 1, 1934.

At a Special Term, Part I, of the Supreme Court, held in and for the County of New York, at the County Court House in the Borough of Manhattan, City of New York, on the 11th day of August 1931.

Present: Honorable Edward S. Dore, Justice.

IN THE MATTER OF THE APPLICATION OF THE PEOPLE OF THE STATE OF New York, by James A. Beha, Superintendent of Insurance of the State of New York, for an order to take possession of the property and conserve the assets for the benefit of the creditors of Moscow Fire Insurance Company, of Moscow, Russia, and the interests of its policyholders, creditors, stockholders, and the public

Order upon Remittitur of the Court of Appeals

The above-named Moscow Fire Insurance Company, of Mos-
51 cow, Russia, having appealed to the Court of Appeals from the order of the Appellate Division of the Supreme Court, First Department, dated May 29, 1930, modifying and as modified affirming an order of Special Term, Part I, of the Supreme Court, New York County, dated September 10, 1929; and the said appeal having been argued in the Court of Appeals and the Court of Appeals having ordered and adjudged that the order of the Appellate Division and that of Special Term, be reversed and order entered dissolving the injunction and directing the transfer or the deposit of the surplus in accordance with the opinion and having remitted the record and proceedings in said court to the Supreme Court there to be proceeded upon according to law; and the remittitur of the Court of Appeals dated February 11, 1931, having been filed in the office of the Clerk of the County of New York on the 23rd day of July 1931; and the

above-named Company having moved for an order making the judgment of the Court of Appeals the judgment of the Supreme Court;

Upon reading the order of remittitur certificate of the Court of Appeals dated February 11, 1931, and heretofore filed herein, and upon reading and filing the notice of motion herein dated July 23d, 1931, and the affidavits of Frederick B. Campbell verified July 23d, 1931, of Paul Lucke verified June 22d, 1931, of Nicholas Goutchkoff verified June 23d, 1931, and of Michael Imchanitzky verified July 23d, 1931, and due proof of service thereof in support of said motion and the answering affidavit of John M. Downes, verified July 30, 1931, and the replying affidavit of Frederick B. Campbell verified August 1, 1931.

52 Now, upon motion of Campbell & Whipp, attorneys for the above named Moscow Fire Insurance Company, of Moscow, Russia, it is

Ordered, adjudged, and decreed:

(1) That the order and judgment of the Court of Appeals dated February 11, 1931, be made the order and judgment of this court.

(2) That the injunction contained in the liquidation order herein, dated and entered August 8, 1925, as resettled by order dated and entered September 11, 1925, be forthwith vacated and dissolved.

(3) That all claims filed with the Superintendent of Insurance before the date of this order be determined within the instant liquidation proceeding according to law.

(4) That the Superintendent of Insurance, as Liquidator of Moscow Fire Insurance Company, of Moscow, Russia, is hereby directed to retain in his possession for four (4) months subsequent to the date of this order, the surplus U. S. funds of the above named Company, subject to any further order of the court within such period of time as to any part of such funds; and upon the expiration of such period of four (4) months, after making reservation of funds sufficient to satisfy (a) his proper charges, expenses, and taxes, (b) an amount sufficient to satisfy all claims with interest filed with

53 said Superintendent of Insurance before the date of this order, and (c) claims upon which any attachments shall be served upon said Superintendent of Insurance during said four (4) months in actions at law against the Company, to release, pay, transfer, and deliver the surplus assets of Moscow Fire Insurance Company, of Moscow, Russia, to Paul Lucke, as sole surviving director of said Company and conservator of its property, upon condition that he file with the clerk of this court a duly approved surety company bond in a sum equal to the value of the assets so to be released, paid, transferred, and delivered, such bond to be in the following form:

Know all men by these presents, that Moscow Fire Insurance Company, of Moscow, Russia, and Paul Lucke, of Paris, France, individually and as sole surviving director of said Moscow Fire

Insurance Company and conservator of its property, as principals, and (insert name of surety company) a corporation, having an office at No. in the City and State of New York, as surety, are held and firmly bound unto the People of the State of New York, as obligee, in the sum of Dollars ($) lawful money of the United States, to be paid to the said People, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Signed, sealed, and delivered this day of , 1931.

54 Whereas, the Court of Appeals of the State of New York has directed the delivery by the Superintendent of Insurance of the State of New York of assets of the above-named Company to the surviving director of the board of directors of such Company upon the filing by him of a surety company bond to the People of the State in a sum equal to the value of the assets so delivered, with a condition to the effect that such director shall faithfully apply such assets to the use of the corporation, its creditors and shareholders, the bond to be enforceable, in case of breach of the condition, by the corporation or by any creditor affected thereby:

Now, therefore, the condition of this obligation is such that if the above bounden Moscow Fire Insurance Company, of Moscow, and Paul Lucke, individually and as sole surviving director of said Moscow Fire Insurance Company and conservator of its property, shall faithfully apply the assets of the Moscow Fire Insurance Company, of Moscow, Russia, to be released and delivered by the Superintendent of Insurance of the State of New York to said Paul Lucke to the use of the said Moscow Fire Insurance Company, of Moscow, Russia, its creditors and shareholders, then this obligation to be null and void, otherwise to remain in full force and effect, and in case of breach of the condition, to be enforceable by the Moscow Fire Insurance Company, of Moscow, Russia, or by any creditor or shareholder thereof affected thereby.

55 In witness whereof the principals and the surety have caused this bond to be duly signed and sealed the day and year first above written.

MOSCOW FIRE INSURANCE COMPANY, OF MOSCOW, RUSSIA,
By (PAUL LUCKE), *Surviving Director and Conservator.*
(PAUL LUCKE),
Individually and as surviving Director and Conservator.
By (Surety Company), *Surety.*

(Acknowledgments and authority of attorneys in fact for surety to follow here.)

(5) As an alternative to the giving of the bond hereinabove specified, the Superintendent of Insurance, upon being notified that the said Moscow Fire Insurance Company elects not to furnish the said bond, is hereby directed to release, pay, transfer, and deliver

the said surplus assets to Bank of New York and Trust Company, of No. 48 Wall Street, New York City, as the agent or depositary of said Moscow Fire Insurance Company, of Moscow, Russia, and of the said Paul Lucke as surviving director and conservator, upon the filing with the clerk of this court of a written stipulation of said Moscow Fire Insurance Company and of said Paul Lucke as such surviving director and conservator of said Company, that such surplus assets or fund will not be withdrawn except upon the order of a court of competent jurisdiction.

56 . (6) The Superintendent of Insurance is hereby directed to make and file within thirty (30) days from the date of this order an account of his proceedings as liquidator of Moscow Fire Insurance Company, of Moscow, Russia, from March 7th, 1929, down to the date of this order.

(7) Any party to this proceeding may hereafter apply at the foot of this decree for such further relief as he may be advised.

Enter,

E. S. D., *J. S. C.*

Exhibit B

Certified copies of Russian Text of Decrees, published April 20, 1918, December 1, 1918, March 7, 1919, and March 5, 1921, attached to Bill of Particulars dated October 1, 1934.

57 *Certified translation of Russian decree, published April 20, 1918*

Source: Sobranie Uzakonenii I Pasporyazhenii Rabochego I Krestyanskogo Pravitelstva (Collection of Laws and Orders of the Worker's and Peasant's Government) 1917–1918, Nos. 1–80, Moscow, 1919

[Translation]

Decree of the Soviet of People's Commissars

420. Regarding the registration of stock certificates, bonds, and other interest-bearing securities.

(1) In pursuance of the decree of December 29, 1917, on the discontinuance of payments on coupons and dividends (Sobranie Uzakonenii I Rasporyazhenii Rabochego I Krestyanskogo Pravitelstva—Collection of Laws and Orders of the Worker's and Peasant's Government—No. 13, Article 185), the system of anonymous stock certificates and all kinds of other interest-bearing securities is abolished and henceforth only name-bearing interest-bearing securities shall be valid.

NOTE.—Those state interest-bearing securities to which, by special resolution of the Government, circulation has been accorded on a

par with paper money, are not subject to the provisions of the present clause.

(2) In accordance therewith, there shall be introduced an
58 obligatory registration of stock certificates, bonds, and all kinds of other interest-bearing securities, Russian and foreign, belonging not only to citizens of the Russian Soviet Republic, but also to foreign citizens residing in its boundaries.

(3) Each owner or holder of securities indicated in clause 1 must present them for registration in one of the offices or branches of the People's (State) Bank of the Russian Soviet Republic.

(4) On the securities presented in accordance with the preceding clause there shall be denoted by the State Bank, under its seal, the Christian name, patronymic, surname, and address of their owners, which shall likewise be entered in the register of negotiable instruments.

(5) All branches of the People's (State) Bank and the State Savings Bank, all state and public institutions, as well as nonnationalized credit institutions, in which stock certificates and interest-bearing securities are kept for safe keeping, for management, in pledge, as security, etc., must effect the registration of securities there located, recognizing as the owners thereof those physical and juridical persons in whose behalf and in whose name they are entered. All this information relating to registration must be centered in the local branches of the People's (State) Bank.

NOTE.—Interest-bearing securities, found in safe deposit boxes, are considered as the property of the renters of the safe deposit
59 boxes, if, in the safe deposit box itself, there is not found evidence to the contrary.

(6) The prohibition of the disposition of stock certificates, bonds, and other interest-bearing securities set forth in the decree of December 29, 1917, shall retain its validity until the issuance of a law concerning the introduction of a system permitting the disposition of stock certificates and other interest-bearing securities.

Only owners of stock certificates and other interest-bearing securities, who have correctly and on time registered them, shall have a right to compensation, in the event of the nationalization of enterprises, in those amounts and on those conditions which shall be determined by the law regarding nationalization.

Likewise, only such owners of stock certificates shall have a right to a dividend after the payment thereof, suspended by the law of December 29, 1917, shall have been authorized.

(7) The presentation of stock certificates and other interest-bearing securities on hand must be preceded by the filing of applications. The form of these applications, the date of their filing, and further regulations pertaining to the presentation of stock certificates and

to their registration, shall be determined by the People's Commissariat for Finance and shall be made known to the public.

(8) All stock certificates with respect to which the applications, indicated in clause 7, will not have been filed in time, shall be subject to become, without recompense, state property.

NOTE.—Owners and holders of stock certificates who have not carried out the instructions of the present decree shall be subject to imprisonment for a term of not less than one year.

Those guilty of performing fictitious transactions for the purpose of evading this decree shall be punished by imprisonment for a term of not less than two years.

(9) Annulled securities and stock certificates of confiscated enterprises are also subject to registration in order to guaranty the just interests of the holders.

(10) The registration of Russian interest-bearing securities, bonds and stock certificates, private, public, and state, which are abroad, shall be effected regardless of whether they belong to Russian or foreign citizens; and for their registration it shall be obligatory to present them in the original to persons or institutions who shall be empowered by the appropriate diplomatic representatives of Russia abroad to keep state registers in the corresponding appropriate states and during periods which shall be established by the aforesaid diplomatic representatives.

Signed: President of the Soviet of People's Commissars, VI. Ulyanov (Lenin). For the People's Commissar of Finance, I. Gukovski. President of the Supreme Soviet of National Economy, A. I. Rykov. In charge of the Affairs of the Soviet of People's Commissars, VI. Bonch-Bruevich. April 18/5, 1918.

Published in Izvestiya of the All-Russian Central Executive Committee of Soviets, April 20/7, 1918, No. 78.

Translator's note: I hereby certify that the above translation is conformable with the attached original to the best of my knowledge.

IGNATIUS JAWNEY,
Principal Translator, Department of State.

Appointed Translator January 1928.

Tr:IJ:MA:SS 9/27

Certified translation of Russian decree, published December 1, 1918

Source: Collection of Decrees and Orders on National Economy (October 25, 1918–March 15, 1919) Volume Two. Published by the Supreme Soviet of National Economy of the Russian Socialist Federated Soviet Republic. Moscow, 1920. Pages 720, 721.

Decree of the Soviet of People's Commissars

603. On the organization of the insurance business in the Russian Republic.

(1) Insurance in all its forms, such as: fire insurance, insurance on shipments, life insurance, accident insurance, hail insurance, livestock insurance, insurance against failure of crops, etc., is hereby proclaimed as a State monopoly.

NOTE.—Mutual insurance of movable goods and merchandise by the cooperative organizations is conducted on a special basis.

(2) All private insurance companies and organizations (stock and share holding, also mutual) upon issuance of this decree are subject to liquidation; former rural [1] (People's Soviet) and municipal mutual insurance organizations operating within the boundaries of the Russian Republic are hereby proclaimed the property of the Russian Socialist Federated Soviet Republic.

(3) For the immediate organization of the insurance business and for the liquidation of parts of insurance institutions, which have become the property of the Russian Socialist Federated Soviet Republic, a Commission is established under the Supreme Soviet of National Economy, consisting of representatives of the Supreme Soviet of National Economy, the People's Commissariats of Commerce and Industry, Interior Affairs, the Commissar of Insurance and Fire Prevention, Finances, Labor, and State Control, and of Soviet Insurance Organizations (People's Soviet and Municipal Mutual).

NOTE.—The same Commission is charged with the liquidating of private insurance organizations, all property and assets of which, disclosed at the time of their liquidation, become the property of the Russian Socialist Federated Soviet Republic.

(4) The above-mentioned reorganization and liquidation of existing insurance organizations and institutions shall be accomplished not later than the first day of April 1919.

(5) The Commissariat of Insurance and Fire Prevention, together with all its institutions, is reorganized into the Insurance Department of the Supreme Soviet of National Economy. The matter of fire prevention is tranasferred to the Supreme Soviet of National Economy.

(6) No Soviet properties and enterprises are subject to insurance.

[1] semskie.

(7) Life insurance with the State Savings Banks is conducted upon the former basis.

(8) The present decree comes into force on the day of its publication.

(Signed) V. LYANOV (Lenin),
Chairman of the Soviet of People's Commissars.
V. BONCH-BRUEVICH,
Administrator of Affairs of the Soviet of People's Commissars.

("IZVESTIYA of the All-Russian Central Executive Committee of Soviets", December 1, 1918, No. 263.)

64 [Translator's Note.] I hereby certify that the above translation is conformable with the attached original to the best of my knowledge.

IGNATIUS JAWNEY,
Principal Translator, Department of State.
Appointed Translator, January 1928.
Russian.
Tr.IJ:MW:SS.

Certified translation of Russian decree, published March 7, 1919

[Translation]

Source: Sobranie Uzakonenii I Rasporyazhenii Rabochego I Krestyanskogo Pravitelstva (Collection of Laws and Orders of the Worker's and Peasant's Government), 1919, Pages 133–134

Decree of the Soviet of People's Commissars

108. On the liquidation of obligations of state enterprises.

In view of the fact that all state (nationalized, sequestrated, former governmental, etc.) enterprises, on the basis of the decree of the Soviet of People's Commissars regarding the financing of
65 enterprises (Collection of Laws, 1919, No. 10–11, Art. 107), beginning with March 1 of this year, are being supplied with necessary funds exclusively through separate budget financing, the Soviet of People's Commissars decrees:

(1) Stock-certificates and shares of joint stock companies and partnerships, whose enterprises have been either nationalized or sequestrated, are annulled even though such enterprises have not yet been placed under the direction of governmental administrations and have remained in the use of former owners without payment of rent.

(2) State enterprises are freed from the payment of all debts to private persons and enterprises which have arisen prior to the nationalization of these enterprises, including payments on bond loans, with the exception only of wages due to their workers and employees.

NOTE.—Former governmental plants which, as the result of the October revolution, have been placed at the disposition of the Work-

er's-Peasant's Government, are freed from the payment of those debts only which have arisen before October 25, 1917.

(3) The debts of State enterprises due other State enterprises and institutions, the People's Bank of the R. S. F. S. R. and all former private credit institutions which have amalgamated with it, and also all kinds of State and local taxes in arrears, are annulled and are not subject to collection.

66 (4) Cash and capital belonging to State enterprises, in credit institutions, shall be taken from their administration and shall be transferred to the income of the Treasury, with the exception of sums paid out to an enterprise under budget estimates for the first half year of 1919, and with the exception of construction credits for 1918.

(5) Obligations of third persons with respect to State enterprises retain their validity, and the appropriate head office, center, or section of the Supreme Soviet of National Economy, shall be given the right to repudiate agreements concluded by a former owner of an enterprise before its nationalization or before its actual transfer to the direction of a governmental administration.

(6) A detailed instruction concerning the putting into effect of the present decree shall be completed within a week's time by the Supreme Soviet of National Economy together with the People's Commissariats of State Control and of Finance.

Signed: President of the Soviet of People's Commissars, V. Ulyanov (Lenin). In charge of the affairs of the Soviet of People's Commissars, V. Bonch-Bruevich. Secretary of the Soviet of People's Commissars, L. Fotieva.

March 4, 1919.

Published in Izvestiya of the Central Executive Committee, March 7, 1919. No. 52.

67 Translator's Note: I hereby certify that the above translation is conformable with the attached original to the best of my knowledge.

IGNATIUS JAWNEY,
Principal Translator, Department of State.

Appointed Translator, January 1928.

Tr: IJ: AT: SS.

30005—35——3

Certified translation of Russian decree, published March 5, 1921

Source: Sobranie Uzakonenii I Rasporyazhenii Rabochego I Krestyanskogo Pravietelstva (Collection of Decrees and Orders of the Worker's and Peasant's Government). Publication of the People's Commissariat for Justice, March 18, 1921, No. 18, Article 111, Page 106

[Translation]

111. Regarding the confiscation of all movable property of citizens who have fled beyond the borders of the Republic or who have been in hiding up to the present time.

The Soviet of People's Commissars has resolved the following as supplementary to its decree concerning property without an owner (Collection of Decrees and Orders, 1920, No. 87, Article 442):

1. All movable property, regardless of what it consisted of or where it was found, of citizens who have fled beyond the borders of the Republic or of citizens who have been in hiding up to the present time, is declared the property of the R. S. F. S. R.

2. Of said property all articles of art or antiquity which possess a particular artistic or historic value shall be given over by order of the People's Commissariat for Public Instruction to museums, universities, or other educational institutions; all the remaining property of such citizens shall be converted into a merchandise fund of the Republic and shall be placed at the disposition of the People's Commissariat for Foreign Trade and other People's Commissariats in accordance with their respective jurisdictions.

3. In execution of the present resolution a detailed instruction shall be issued to the People's Commissariats for Public Instruction and for Foreign Trade.

(Signed) V. ULYANOV (Lenin),
President of the Soviet of People's Commissars.
N. GORBUNOV,
Administrator of Affairs of the Soviet of People's Commissars.
L. FOTIEVA,
Secretary of the Soviet of People's Commissars.

69 NOVEMBER 19, 1920.

Published in Izvestiya of the All Russian Central Executive Committee of Soviets, No. 49, March 5, 1921.

[Translator's Note.] I hereby certify that the above translation is conformable with the attached original to the best of my knowledge.

IGNATIUS JAWNEY,
Principal Translator, Department of State.

Appointed Translator, January 1928.
Russian.
Tr. IJ.

70 In United States District Court, Southern District of New York

[Title omitted.]

Affidavit of John C. Vedder, in opposition to complainant's motion for injunction pendente lite

STATE OF NEW YORK,
County of New York, Southern District of New York, ss:

JOHN C. VEDDER, being first duly sworn, deposes and says:

I am a Vice President of the defendant Bank of New York and Trust Company. On August 23, 1934, there was served upon the Trust Company the subpoena and bill of complaint herein, accompanied by an order to show cause why an injunction should not be granted during the pendency of this suit enjoining the Trust Company from transferring or paying out funds which it now holds as agent or depositary of Moscow Fire Insurance Company and of Paul Lucke, as the conservator of the property of said Moscow Fire Insurance Company. Included in the order to show
71 cause was a provision restraining the Trust Company from transferring or paying out said funds prior to the determination of such motion for injunction.

On April 18, 1933, the defendant Trust Company received from George S. Van Schaick, Superintendent of Insurance of the State of New York, pursuant to an order of the Supreme Court of the State of New York, dated August 11, 1931, certain securities and cash in the par value of upwards of one million dollars as set forth in paragraph "5" of the complaint. Such funds were so delivered to the Trust Company by the N. Y. Superintendent of Insurance and accepted by the Trust Company as agent or depositary of Moscow Fire Insurance Company, of Moscow, Russia, and of Paul Lucke, as surviving director and conservator of said Company, pursuant to the stipulation of said Moscow Fire Insurance Company

and of said Paul Lucke, as such surviving director and conservator of said Company, to the effect that said funds would not be withdrawn except upon the order of a court of competent jurisdiction. A copy of the Trust Company's receipt for such funds is hereto attached and made a part hereof, marked Exhibit 1. A copy of the said order of the N. Y. Supreme Court, dated August 11, 1931, is attached hereto and made a part hereof, marked Exhibit 2. The U. S. securities mentioned in said receipt have been redeemed and under an order of the N. Y. Supreme Court the N. Y. City securities mentioned in such receipt have been sold. The Trust Company now holds said funds, except that during the progress of the suit in the
72 N. Y. Supreme Court hereinafter mentioned, and prior to August 22, 1934, the Trust Company made certain payments therefrom pursuant to orders of the N. Y. Supreme Court.

Shortly after the receipt of such funds, the Trust Company was served on April 21, 1933, with a summons and complaint in a suit in the Supreme Court of the State of New York for the County of New York, in which suit the plaintiffs were Moscow Fire Insurance Company and Paul Lucke as sole surviving director of said Moscow Company and conservator of its property, and the defendants were the Trust Company as agent or depositary of said Moscow Company and of said Paul Lucke as said surviving director and conservator, and numerous other party defendants. Such suit sought the judgment of the court as to the disposition of the funds so received by the Trust Company as hereinbefore stated. A copy of the summons and complaint in such suit is attached hereto and made a part hereof, marked "Exhibit 3." In such suit the Trust Company duly appeared by its attorneys, Messrs. Emmet, Marvin & Martin. On August 22, 1934, the Trust Company was served with a copy of the judgment in such suit, a copy of which judgment is attached hereto and made a part hereof, marked "Exhibit 4." On August 18, 1934, the Trust Company received from the U. S. District Attorney a letter demanding surrender of the fund, a copy of which letter is attached hereto and made a part hereof, marked "Exhibit 5."

The judgment of August 22, 1934, awards a considerable part
73 of the funds so deposited with the Trust Company as hereinbefore stated to many different parties therein mentioned, and provides that the balance of such fund shall be held subject to the further order of the N. Y. Supreme Court. Certain of the judgment-creditors so named in such judgment have demanded of the Trust Company payment of the amounts which they have been respectively so awarded, and four judgment-creditors so named have issued executions thereon to the Sheriff of New York County and notices of levy have been served upon the Trust Company. The Trust Company has been further served with several warrants of attachment by alleged creditors of judgment-creditors specified

in said judgment and with an order for the examination of the Trust Company by a judgment-creditor of a judgment-creditor named in said judgment.

JOHN C. VEDDER.

Sworn to before me this 12th day of September 1934.

B. Koechel,
B. KOECHEL,
Notary Public.

[SEAL]

Kings Co. Clk's No. 32, Reg. No. 6029.
N. Y. Co. Clk's No. 70, Reg. No. 6K40.
Commission expires March 30, 1936.

74 *Exhibit 1, attached to affidavit of John C. Vedder*

State of New York

Insurance Department

Bureau of Liquidations, Conservations, and Rehabilitations

80 Centre Street, New York

Supreme Court, New York County

IN THE MATTER OF THE APPLICATION OF THE PEOPLE OF THE STATE OF New York, by James A. Beha, Superintendent of Insurance of the State of New York, for an order to take possession of the property and conserve the assets for the benefit of the creditors of the Moscow Fire Insurance Company of Moscow, Russia, and the interests of its policyholders, creditors, stockholders, and the public

Received from George S. Van Schaick, Superintendent of Insurance of the State of New York, as liquidator of the United
75 States Branch of Moscow Fire Insurance Company of Moscow, Russia, the cash and securities hereinafter described and specified:

	Par value
City of New York Corporate Stock 3½% 1941	$500.00
" " " " " " 3½% 1949	30,000.00
" " " " " " 4% 1955	368,000.00
" " " " " " 4% 1956	385,000.00
" " " " " " 4% 1955	215,000.00
U. S. of America 2nd Liberty Loan—Converted, 4¼% 1942 (Called for redemption Nov. 1927.)	80,000.00
Check payable to Bank of New York and Trust Company, as agent or depositary of Moscow Fire Insurance Company of Moscow, Russia	1,899.54
Total Cash and Securities	1,080,399.54

The assets hereinbefore specified are received and accepted by the undersigned, Bank of New York and Trust Company, as agent or depositary of the said Moscow Fire Insurance Company of Mos-

cow, Russia, and of Paul Lucke as surviving director and conservator of said company by virtue of and pursuant to the stipulation contained in an instrument dated July 20th, 1931, executed on behalf of Moscow Fire Insurance Company by Paul Lucke, as its surviving director and conservator, and by Paul Lucke, individually, and as surviving director and conservator, which said instrument also designated the Bank of New York and Trust Company, of No. 48 Wall Street, New York City, as the agent or depositary, to receive from
the Superintendent of Insurance, of the State of New York,
76 as liquidator aforesaid, the delivery of the surplus assets of
said company under the conditions provided in the orders hereinafter mentioned, which said stipulation was made in accordance with and pursuant to an order of the Court of Appeals of the State of New York, dated and filed in the office of the Clerk of said Court on February 10th, 1931, and an order of the Supreme Court, New York County, dated and entered August 11th, 1931, making the said order of the Court of Appeals the order of said Supreme Court, in and by which said orders it was provided that delivery of the surplus assets of Moscow Fire Insurance Company, in possession of the Superintendent of Insurance of the State of New York, as liquidator, may be made to a trust company in the City of New York, as agent or depositary, upon the stipulation of said Moscow Fire Insurance Company and Paul Lucke, its conservator, designated in said orders, that the fund, consisting of said assets, will not be withdrawn except upon the order of a court of competent jurisdiction.

Dated, New York, N. Y., April 18th, 1933.

[SEAL] BANK OF NEW YORK AND TRUST COMPANY,

By J. C. VEDDER,

Vice-President, as Agent or Depositary of Moscow Fire Insurance Company, and of Paul Lucke, as surviving director and conservator of said company.

P. LUCKE,

As surviving director and conservator of Moscow Fire Insurance Company.

77 *Exhibit 2*

Copy of Order of Supreme Court of New York, New York County, dated August 11, 1931, attached to affidavit of John C. Vedder.

(Printed hereinbefore as Exhibit A attached to Bill of Particulars dated October 1, 1934.)

Exhibit 3, attached to affidavit of John C. Vedder

Summons and Complaint in a suit entitled Moscow Fire Insurance Company of Moscow, Russia, and Paul Lucke as sole surviving director of Moscow Fire Insurance Company and Conservator of

its property, et al. against Bank of New York and Trust Company as agent or depository of said Moscow Fire Insurance Company of Moscow, Russia, and of the said Paul Lucke as surviving director and conservator [as hereinbefore printed as Exhibit B attached to affidavit in support of Order to Show Cause dated August 22, 1934] commenced in Supreme Court, New York County on or about April 19, 1933.

78 *Exhibit 4, attached to affidavit of John C. Vedder*

Supreme Court, New York County

Moscow Fire Insurance Company, of Moscow, Russia, and Paul Lucke, as sole surviving director of Moscow Fire Insurance Company of Moscow, Russia, and Conservator of its property, plaintiffs

against

Bank of New York and Trust Company, as Agent or Depositary of said Moscow Fire Insurance Company of Moscow, Russia, and of the said Paul Lucke as surviving director and conservator; Assecuranz Union von 1865; Carol Otto von Hollitscher and Paul F. Gottlieb, co-partners, transacting business under the firm name and style of Heckscher & Gottlieb; Bertram Aymar Cater; Georg J. Fahrbach; Vladimir A. Miller; Michael Imchanitzky; and Fedor R. Amlong, Carl R. Amlong, Maria G. Arnaud, Alice F. Assmus [and 143 other named defendants], as stockholders of Moscow Fire Insurance Company, of Moscow, Russia, on behalf of themselves and all other stockholders similarly situated of said Moscow Fire Insurance Company, of Moscow, Russia defendants

---

Samuel E. Morro, Marie Lobkoschebounine, Bona Wiktorja Kruger and Vladimir Velichko, in behalf of themselves and all other stockholders of Moscow Fire Insurance Company of Moscow, Russia, plaintiffs

against

Moscow Fire Insurance Company, of Moscow, Russia, Paul Lucke and Bank of New York and Trust Company, as agent and depositary of said Moscow Fire Insurance Company of Moscow, Russia, and of said Paul Lucke, defendants
County Clerk's Index No. 15074–1933.
Judgment.

79 The first of the above-entitled actions having been referred by an order duly made and entered therein the 13th day of October 1933, to James F. Donnelly, Esq., as Referee to hear and

determine all the issues therein and said above-entitled actions having been thereafter consolidated by an order duly made and entered herein on the 18th day of April 1934, wherein all the issues in both of said above-entitled actions were referred to the said James F. Donnelly, Esq., as Referee to hear and determine the same, and after trial had on due notice to all the parties, said Referee having on the 22nd day of August 1934, duly made and filed his report herein stating the findings of fact herein and conclusions of law thereon, and directing judgment as hereinafter stated, and on said trial Campbell & Whipp, Esquires, having appeared as attorneys for Moscow Fire Insurance Company and Paul Lucke, as sole surviving director of Moscow Fire Insurance Company and conservator of its property, plaintiffs in the first of said actions and defendants in the second of said actions, and Borris M. Komar, Esquire, having appeared for Samuel E. Mooro et al., plaintiffs in the second of said actions, and Emmet, Marvin & Martin, Esquires, having appeared as attorneys for the defendant Bank of New York and Trust Company, as agent or depositary of Moscow Fire Insurance Company and of the said Paul Lucke, as surviving director and conservator, and Osmond K. Fraenkel, Esquire, having appeared as attorney for defendants Vladimir Kentman, Andrei D. Pavlov, and others, and White
80 & Case, Esquires, having appeared as attorneys for the defendant Olga Hoppe, and Henry Breckenridge, Esquire, having appeared as attorney for the defendants Eugenie M. Mikhailoff and Valentina M. Barthel-Mikhailoff Schott, and Samson Selig, Esquire, having appeared as attorney for the defendants Count Dmitri Ivanovitch Tolstoi and Boris Tchitcherin and John Steggall Sawyer, as executors under the Last Will and Testament of Elena V. Tchitcherina, deceased, and Englehard, Pollak, Pitcher, Stern and Clarke, Esquires, having appeared as attorneys for the defendants Brandforsikrings Selskabet, Norge-Drammen, Holger Zahle, as assignee of Forsakringsaktiebolaget Skandia and Gerson Jakubovic, Meier Jakubovic, Liba Jakubovic, Chaja-Elka Jakubovic, Riva Jakubovic, Amalia Jakubovic and Scheine Joffe nee Jakubovic, and Cabell, Ignatius & Lown, Esquires, having appeared as attorneys for the defendants Heckscher & Gottlieb, Assecuranz Union Von 1865 and Vladimir A. Miller, and Alfred L. Green, Esquire, having appeared as attorney for the defendant Michael M. Imchanitzsky, and Chester W. Davis, Esquire, having appeared as attorney for the claimants Robert Natus and Lorentz & Krusche;

Now, on motion of Campbell & Whipp, attorneys for the said plaintiffs Moscow Fire Insurance Company and Paul Lucke, as sole surviving director of Moscow Fire Insurance Company and conservator of its property;

81 It is adjudged:

1. The Moscow Fire Insurance Company is justly indebted to George I. Fahrbach, of Riga, Latvia, in the sum of Five thousand six hundred dollars ($5,600) on balance of his account with said company.

2. The said Moscow Fire Insurance Company and Paul Lucke as sole surviving director of Moscow Fire Insurance Company and conservator of its property and Bank of New York and Trust Company as agent or depositary of said Moscow Fire Insurance Company and of the said Paul Lucke as surviving director and conservator are hereby directed to pay to the said George T. Fahrbach in satisfaction of the aforesaid indebtedness the sum of Five thousand six hundred dollars ($5,600).

3. The said Moscow Fire Insurance Company is justly indebted to Brandforsikrings Selskabet, Norge-Drammen, in the sum of Ten thousand five hundred dollars ($10,500) as of April 13, 1934, on balance of account.

4. The said Moscow Fire Insurance Company and Paul Lucke as sole surviving director of Moscow Fire Insurance Company and conservator of its property and Bank of New York and Trust Company as agent or depositary of said Moscow Fire Insurance Company and of the said Paul Lucke as surviving director and conservator
82 are hereby directed to pay to said Brandforsikrings Selskabet, Norge, Drammen, or to their attorneys appearing herein, Englehard, Pollak, Pitcher, Stern, & Clarke, in satisfaction of the aforesaid indebtedness, the sum of Ten thousand five hundred dollars ($10,500), with interest thereon from April 13, 1934.

5. The said Moscow Fire Insurance Company is justly indebted to Holger Zahle, as assignee of Forsakringsaktiebolaget Skandia, in the sum of Five thousand seven hundred fifty dollars ($5,750) as of April 13, 1934.

6. The said Moscow Fire Insurance Company and Paul Lucke as sole surviving director of Moscow Fire Insurance Company and conservator of its property and Bank of New York and Trust Company as agent or depositary of said Moscow Fire Insurance Company and of the said Paul Lucke as surviving director and conservator are hereby directed to pay to the said Holger Zahle, or to his attorneys appearing herein, Englehard, Pollak, Pitcher, Stern & Clarke, in satisfaction of the aforesaid indebtedness, the said sum of Five thousand seven hundred fifty dollars ($5,750), with interest thereon from April 13, 1934.

7. The Moscow Fire Insurance Company is justly indebted to Gerson Jakubovic, Meier Jakubovic, Liba Jakubovic, Chaja-Elka Jakubovic, Riva Jakubovic, Amalia Jakubovic, and Scheine Joffe nee
Jakubovic, in the sum of One thousand one hundred and two
83 dollars ($1,102) as amount due under policy of insurance, with interest thereon at the rate of four and nine-tenths per cent (4.9%) per annum from June 1, 1916.

8. The said Moscow Fire Insurance Company and Paul Lucke as sole surviving director of Moscow Fire Insurance Company and conservator of its property and Bank of New York and Trust Company as agent or depositary of said Moscow Fire Insurance Company and of the said Paul Lucke as surviving director and conservator are

hereby directed to pay to the said Gerson Jakubovic, Meier Jakubovic, Liba Jakubovic, Chaja-Elka Jakubovic, Riva Jakubovic, Amalia Jakubovic, and Scheine Joffe nee Jakubovic, or to their attorneys appearing herein, Englehard, Pollak, Pitcher, Stern & Clarke, in satisfaction of the aforesaid indebtedness, the sum of One thousand one hundred two dollars ($1,102), with interest thereon at the rate of four and nine-tenths per cent (4.9%) per annum from June 1, 1916.

9. The Moscow Fire Insurance Company is justly indebted to Robert Natus in the sum of Three thousand four hundred sixteen and 02/100 dollars ($3,416.02), as amount due under policy of insurance.

10. The said Moscow Fire Insurance Company and Paul Lucke, as sole surviving director of Moscow Fire Insurance Company and conservator of its property, and Bank of New York and Trust
84 Company, as agent or depositary of said Moscow Fire Insurance Company and of the said Paul Lucke, as surviving director and conservator, are hereby directed to pay to the said Robert Natus, or to his attorney appearing herein, Chester W. Davis, in satisfaction of the aforesaid indebtedness the sum of Three thousand four hundred sixteen and 02/100 dollars ($3,416.02).

11. The Moscow Fire Insurance Company is justly indebted to Joint Stock Company of Cotton Manufacturer Lorentz & Krusche of Zgierz, Poland, in the sum of Twenty thousand dollars ($20,000) as amount due under claim as adjusted pursuant to a judgment of the District Court of Warsaw, Poland.

12. The said Moscow Fire Insurance Company and Paul Lucke, as sole surviving director of Moscow Fire Insurance Company and conservator of its property, and Bank of New York and Trust Company as agent or depositary of said Moscow Fire Insurance Company and of said Paul Lucke, as surviving director and conservator, are hereby directed to pay to the said Lorentz & Krusche, or to their attorney, appearing herein, Chester W. Davis, in satisfaction of the aforesaid indebtedness, the sum of Twenty thousand dollars ($20,000).

13. The said Moscow Fire Insurance Company is justly indebted to Carl Otto von Hollitscher and Paul F. Gottlieb, co-partners transacting business in Berlin, Germany, under the firm name and
85 style of Heckscher & Gottlieb in the sum of Thirty thousand dollars ($30,000) for commissions and services.

14. The said Moscow Fire Insurance Company and Paul Lucke as sole surviving director of Moscow Fire Insurance Company and conservator of its property and Bank of New York and Trust Company as agent or depositary of said Moscow Fire Insurance Company and of the said Paul Lucke as surviving director and conservator, are hereby directed to pay to the said firm of Heckscher & Gottlieb, or to their attorneys appearing herein, Cabell, Ignatius & Lown, in satisfaction of the aforesaid indebtedness the said sum of Thirty thousand dollars ($30,000).

15. That Paul Lucke had the authority both as General Manager and with the Power of Attorney of September 28, 1918, and as conservator of the assets of Moscow Fire Insurance Company as sole surviving director and the General Manager of the Company, to enter into the agreement for compensation with Heckscher & Gottlieb; that the amount therein agreed to be paid is reasonable and is a valid and binding charge against the assets of the Moscow Fire Insurance Company now in the possession or under the control of the plaintiff.

16. That Heckscher & Gottlieb are entitled to receive out of the assets of the Moscow Fire Insurance Company now in plaintiff's possession the sum of Thirty thousand dollars ($30,000).

86 17. The said Moscow Fire Insurance Company is justly indebted to Assecuranz Union Von 1865, of Cologne, Germany, in the sum of Three thousand one hundred fifty-five and 12/100 dollars ($3,155.12), as of July 1927, on balance of account.

18. The said Moscow Fire Insurance Company and Paul Lucke as sole surviving director of Moscow Fire Insurance Company and conservator of its property and Bank of New York and Trust Company as agent or depositary of said Moscow Fire Insurance Company and of the said Paul Lucke as surviving director and conservator are hereby directed to pay to the said Assecuranz Union Von 1865, or to their attorneys appearing herein, Cabell, Ignatius & Lown, in satisfaction of the aforesaid indebtedness the said sum of Three thousand one hundred fifty-five and 12/100 dollars ($3,155.12) with interest thereon from July 1, 1927.

19. That Heckscher & Gottlieb had the power and authority under the power of attorney and agency commission granted them by the Moscow Fire Insurance Company, and in force during the year 1916, to arrange for the retrocession of the business of the Moscow Fire Insurance Company under the several insurance treaties which had been negotiated by Heckscher & Gottlieb for the Moscow Fire Insurance Company with direct writing companies in Germany and elsewhere, to the Assecuranz-Union von 1865.

87 20. That the said retrocession arrangements in view of the Russian decree of November 1916 prohibiting further intercourse or communication between the subjects of the Russian Empire and Germany and its subjects; and of the serious consequences to the Moscow Fire Insurance Company which might have ensued in the event of a total default by it in the performance of its obligations to the direct writing companies under the several treaties then current, were proper and necessary measures for the protection of the interests of the Moscow Fire Insurance Company in view of the then emergency.

21. The said Moscow Fire Insurance Company is justly indebted to Vladimir A. Miller, of Paris, France, in the sum of Thirty-four thousand three hundred and two and 51/100 dollars ($34,302.51) for legal services from 1923, with interest on Twenty-four thousand

nine hundred and seventy-five and 82/100 dollars ($24,975.82) thereof from August 11, 1931.

22. The said Moscow Fire Insurance Company and Paul Lucke as sole surviving director of Moscow Fire Insurance Company and conservator of its property, and Bank of New York and Trust Company, as agent or depositary of said Moscow Fire Insurance Company and of the said Paul Lucke as surviving director and conservator, are hereby directed to pay to the said Vladimir A. Miller, or to his attorney appearing herein, Hartwell Cabell, in satisfaction of the aforesaid indebtedness, the said sum of Thirty-four
88 thousand three hundred and two and 51/100 dollars ($34,302.51) with interest on Twenty-four thousand nine hundred and seventy-five and 82/100 dollars ($24,975.82) thereof from August 11, 1931.

23. That Paul Lucke had authority both as General Manager under the Power of Attorney of September 28, 1918, and as Conservator of the assets of the Moscow Fire Insurance Company as sole surviving director and General Manager of the Company, to enter into the contract of employment with Miller; that the fees therein agreed to be paid are a reasonable, valid, and binding charge against the assets of the Moscow Fire Insurance Company now in the possession or under the control of the plaintiffs.

24. That the said Miller is entitled to receive out of the assets of the Moscow Fire Insurance Company now in the plaintiffs' possession the sum of Twenty-four thousand nine hundred and seventy-five and 82/100 dollars $24,975.82), with interest thereon from August 11, 1931, being the date of the remittitur from the Court of Appeals in Matter of People (Moscow Fire Insurance Company).

25. That the said Miller is entitled to receive out of the said assets the sum of Ten thousand dollars ($10,000), less Six hundred and seventy-three and 31/100 dollars ($673.31), being the sum of Nine thousand three hundred twenty-six and 69/100 dollars ($9,326.69), with interest upon each installment from the end
89 of the year in which it was payable after deducting from such instalment the dollar equivalent of the amounts paid in francs during such year, together with interest upon the unpaid portion of said annual payments calculated from the close of the year in which they fell due.

26. The claimant Miller is represented by his attorney in fact, Hartwell Cabell, Esq., who is authorized to receive payment and to give discharges on behalf of said claimant.

27. The said Moscow Fire Insurance Company is justly indebted to Michael Imchanitzky, of New York City, in the sum of Eleven thousand seven hundred and fifty dollars ($11,750), for legal services and disbursements from August 11, 1931.

28. The said Moscow Fire Insurance Company and Paul Lucke as sole surviving director of Moscow Fire Insurance Company and conservator of its property and Bank of New York and Trust Com-

pany as agent or depositary of said Moscow Fire Insurance Company and of the said Paul Lucke as surviving director and conservator are hereby directed to pay to the said Michael Imchanitzky in satisfaction of the aforesaid indebtedness the said sum of Eleven thousand seven hundred and fifty dollars ($11,750).

29. The said Moscow Fire Insurance Company is justly indebted to Bazile Gartoung in the sum of Three thousand five hundred dollars ($3,500), as balance of compensation due under contract of employment.

90 30. The said Moscow Fire Insurance Company and Paul Lucke as sole surviving director of Moscow Fire Insurance Company and conservator of its property and Bank of New York and Trust Company as agent or depositary of said Moscow Fire Insurance Company and of the said Paul Lucke as surviving director and conservator are hereby directed to pay to the said Bazile Gartoung, or to his attorney appearing herein, Osmond K. Fraenkel, the said sum of Three thousand five hundred dollars ($3,500).

31. The said Moscow Fire Insurance Company is justly indebted to Paul Lucke, of Paris, France, in the sum of Sixty thousand dollars ($60,000) as balance due for services from November 1918.

32. The said Moscow Fre Insurance Company and Paul Lucke as sole surviving director of Moscow Fire Insurance Company and conservator of its property and Bank of New York and Trust Company as agent or depositary of said Moscow Fire Insurance Company and of the said Paul Lucke as surviving director and conservator are hereby directed to pay to Paul Lucke in satisfaction of said indebtedness the said sum of Sixty thousand dollars ($60,000).

33. The said Moscow Fire Insurance Company is justly indebted to Frederick B. Campbell and Paul C. Whipp, as copartners practicing law under the firm name and style of Campbell & Whipp, for legal services and disbursements for the period beginning

91 August 11, 1931, and ending April 19, 1933, in the sum of Seventeen thousand eight hundred seventy-four and 99/100 dollars ($17,874.99).

34. The said Moscow Fire Insurance Company and Paul Lucke as sole surviving director of Moscow Fire Insurance Company and conservator of its property and Bank of New York and Trust Company as agent or depositary of said Moscow Fire Insurance Company and of the said Paul Lucke as surviving director and conservator are hereby directed to pay to the said firm of Campbell & Whipp in satisfaction of said indebtedness the said sum of Seventeen thousand eight hundred seventy-four and 99/100 dollars ($17,874.99).

35. After making provision for payment of the indebtedness of the said Moscow Fire Insurance Company and the expenses of the present action, and after making further reservation of a reasonable amount for payment of any future claim and expenses, a balance of Seven hundred thousand dollars ($700,000) is hereby de-

clared to be available for a dividend in liquidation to the shareholders of Moscow Fire Insurance Company to be distributed pro rata to those entitled thereto in the proportion of Seventy dollars ($70.00) for each share of the said Company issued and outstanding.

36. The said Moscow Fire Insurance Company and the said Paul Lucke as sole surviving director of Moscow Fire Insurance Company and conservator of its property and Bank of New York
92 and Trust Company as agent or depositary of Moscow Fire Insurance Company and of the said Paul Lucke as surviving director and conservator, are hereby directed to pay to each shareholder of the Company, or to his heirs, legal representatives, attorneys in fact, or assigns, in accordance with the determination of their several rights and interests in this action, the said sum of Seventy dollars ($70.00) upon and in respect of each share of the said Moscow Fire Insurance Company owned by such shareholder, or his heirs, representatives, or assigns.

37. For the purpose of carrying out the directions for the payment of the dividend in liquidation hereinbefore directed, the following payments are hereby directed to be made by said Moscow Fire Insurance Company and said Paul Lucke, as surviving director and conservator, or by said Bank of New York and Trust Company, as agent or depositary of said Moscow Fire Insurance Company and of the said Paul Lucke, as surviving director and conservator to the following shareholders, or their heirs, legal representatives, attorneys, or assigns, as hereinafter specified:

93

No. on list	Name of shareholder	Name of payee	Amount to be paid
4, 5 and 6	Asov-Don Commercial Bank	Asov-Don Commercial Bank	$3,850.00
8	Antonina Davydovna Alexeieva	William Stern, as administrator of Estate of Antonina Davydovna Alexeieva.	840.00
12	Fedor Romanovitch Amlong	Fedor Romanovitch Amlong	1,120.00
13	Carl Romanovitch Amlong	Carl Romanovitch Amlong	1,750.00
16	Malvina Stepanovna Ananova	Malvina Stepanovna Ananova	840.00
17	Innokenti Semenovitch Andreiev	Sophia Vassilievna Netchaev	210.00
19	Maria Germanovna Arnaud	Maria Germanovna Arnaud	1,750.00
21	Alice Friedrichovna Asmus	Alice Friedrichovna Asmus	560.00
28	Nikolai Dmitrievitch Banketov	Nikolai Dmitrievitch Banketov	210.00
30	Mavriki Nelken	Mavriki Nelken	700.00
31	Carl Leontievitch Bauer	Elizabeth Georgine Hoeltzke	875.00
		Sophie Margarete Law-Gisikow	875.00
		Waldemar Stoecker	218.75
		Herman Stoecker	218.75
		Olga Stahl	218.75
		Alexis Stoecker	218.75
		Helene Waloff	218.75
		Leo Foerster	218.75
		Marina Foerster	218.75

(Thereafter follow similar items to the number of over four hundred, specifying additional shareholders, payees, and amounts.)

94 38. In lieu of payment to any payee named in the preceding paragraph numbered 37, the said Moscow Fire Insurance Company and Paul Lucke as surviving director and conservator, or the said Bank of New York and Trust Company, as agent or depositary of said Moscow Fire Insurance Company and of the said Paul Lucke as surviving director and conservator, may make payment of the amount due to such payee, to the attorney for such payee as established in this action, or by powers of attorney filed with the said Moscow Fire Insurance Company and Paul Lucke as surviving director and conservator, or with the said Bank of New York and Trust Company as agent or depositary of said Moscow Fire Insurance Company and of the said Paul Lucke as surviving director and conservator.

39. The respective amounts of the dividend in liquidation of shareholders whose interests have not been determined herein, and whose names and respective interests have not been set forth in the preceding paragraph numbered 37, are hereby directed to be reserved and retained by said Bank of New York and Trust Company, as agent or depositary of said Moscow Fire Insurance Company, and of the said Paul Lucke, as surviving director and conservator, pending the further determination and order of this Court.

40. Any shareholder or any party to this action or any successor in interest to any such shareholder or party shall be at liberty
95 to apply from time to time at Special Term, Part I, at the foot of this judgment on notice of the attorneys for the several plaintiffs and to the attorneys for defendant shareholders for such further directions or instructions as may be proper.

Dated, New York, August 22nd, 1934.

ALBERT MARINELLI, *Clerk.*

Approved as to Form:
JAMES F. DONNELLY,
Referee.

96 *Exhibit 5, attached to affidavit of John C. Vedder*

Department of Justice

United States Attorneys' Office, New York

Address reply to "United States Attorney" and Refer to Initials and number EJE 70805/3D Pre T-206.

AUGUST 18, 1934.

BANK OF NEW YORK & TRUST COMPANY,
48 Wall Street, New York, N. Y.

SIRS: On behalf of the United States I am authorized to demand; and I hereby demand, delivery and surrender by you to the United States, as lawful owner entitled to possession, certain securities and assets of the value of $1,080,399.54, received by you as depositary

or agent of the Moscow Fire Insurance Company on or about April 18, 1933, from the Superintendent of Insurance of the State of New York. I also demand any securities and assets substituted by you for the aforesaid securities.

As soon as you advise me that the securities and assets are ready for delivery to the United States you will be advised of the manner of delivery.

Respectfully,

(Signed) MARTIN CONBOY,
United States Attorney.

97 In United States District Court, Southern District of New York

[Title omitted.]

Affidavit of Frederick B. Campbell, verified September 11, 1934, in opposition to complainant's motion for injunction pendente lite

STATE OF NEW YORK,
County of New York, Southern District of New York, ss:

FREDERICK B. CAMPBELL, being duly sworn, deposes and says:

1. That he is an attorney at law and a member of the firm of Campbell & Whipp. That such firm and its predecessor law firms have been attorneys and counsel in the United States for the Moscow Fire Insurance Company and the United States branch thereof since in or about the year 1900, when such United States branch was established. That especially since the Russian revolution, resulting in the establishment of the present Soviet government of Russia, deponent has been personally and continuously engaged as at-

98 torney and counsel upon the affairs of the Moscow Company and is personally familiar with all the events pertaining to the said Moscow Company in this country and its United States branch since the beginning of the Russian revolution in October–November 1917.

2. At the time of the beginning of the Russian revolution, the Moscow Fire Insurance Company, through its United States branch located in the City of New York, was actively engaged in the transaction in the State of New York and in the United States of the business of reinsurance of fire risks under annual license from the Superintendent of Insurance of the State of New York and from the Insurance Departments of other states. As required by the laws of the State of New York and by the laws of other states, the said Company maintained in the United States a separate capital for the business of its United States branch, such capital consisting of securities deposited with the Superintendent of Insurance of the State of New York and with the Bankers Trust Company of the City of New York, as trustee, all in trust for the protection of the

policyholders and creditors within the United States of the said Moscow Fire Insurance Company. Such securities consisted of obligations issued by the Government of the United States and by the City of New York.

3. The business of the United States branch of the Moscow Company under annual license, as aforesaid, continued as theretofore, notwithstanding the events of the Russian revolution, until in
99 or about the month of March 1923, at which time the reinsurance treaties under which the United States branch of said Company had been transacting business were cancelled. After March 1923 the United States branch of said Company assumed no new risks but continued thereafter, until August 1925, the transaction and settlement of its business under risks which had been assumed prior to March 1923.

4. By order of the Supreme Court of the State of New York, New York County, dated August 8, 1925 (resettled September 11, 1925), the Superintendent of Insurance of the State of New York was appointed Liquidator of the United States branch of said Moscow Fire Insurance Company under and pursuant to the provisions of Section 63 of the Insurance Law of the State of New York. Thereafter, the Superintendent of Insurance, as such liquidator, took into his possession all of the assets of the United States branch of said Moscow Company and proceeded therefrom to pay and satisfy all the claims of the Company's policyholders and creditors within the United States. After satisfaction of all just claims of such policyholders and creditors within the United States, there remained a substantial surplus the disposition of which was the subject of judicial decision by the Courts of the State of New York. By a final decision of the New York State Court of Appeals rendered on February 10, 1931, and reported in 255 N. Y. 433, and other related decisions reported at pages 415–432 of the same volume of the
100 N. Y. reports, and by the order of the State Supreme Court entered August 11, 1931, upon the remittitur of the Court of Appeals, the Superintendent of Insurance of the State of New York was directed to dispose of such surplus funds as follows:

(a) To pay therefrom all just claims of foreign creditors of the Moscow Fire Insurance Company which had been filed with the Superintendent of Insurance prior to August 11, 1931, the date of the said order on remittitur;

(b) To retain the balance of such surplus for a period of four months after August 11, 1931, to permit any other foreign creditor of the said Moscow Fire Insurance Company to attach the same in actions at law against the said Moscow Fire Insurance Company;

(c) To pay and deliver the balance of such surplus funds remaining after payment of foreign creditors who had filed claims and after reservation of an amount sufficient to protect foreign attachment creditors, to Paul Lucke, the sole surviving director of the

said Moscow Fire Insurance Company, as conservator of the property of the said Company, upon condition that he, the said Paul Lucke, should execute a bond to the People of the State of New York with a condition to the effect that he would faithfully apply the assets to the use of the Moscow Fire Insurance Company, its creditors and shareholders. As an alternative to the giving of the bond hereinabove specified, it was provided in said decision of the
101 Court of Appeals and in the said order of the Supreme Court on remittitur, that upon the election of the said Moscow Company the surplus funds should be released, paid, transferred, and delivered to Bank of New York and Trust Company as the agent or depositary of said Moscow Fire Insurance Company and of the said Paul Lucke as surviving director and conservator, upon the filing with the Clerk of the Supreme Court of the State of New York of a written stipulation of the said Moscow Fire Insurance Company and of the said Paul Lucke as such surviving director and conservator of said Company, that such surplus assets or fund would not be withdrawn except upon the order of a court of competent jurisdiction.

5. The said Moscow Fire Insurance Company and its surviving director and conservator, Paul Lucke, elected to have such surplus assets delivered to the Bank of New York and Trust Company as agent or depositary, and the said Moscow Fire Insurance Company and Paul Lucke, as such surviving director and conservator, executed and filed the stipulation prescribed by the said decision of the Court of Appeals and by the said order on remittitur thereof. Thereafter and on April 18, 1933, the surplus assets of the said Moscow Company were delivered by the Superintendent of Insurance of the State of New York as Liquidator of the said Moscow Fire Insurance Company to the said Bank of New York and Trust Company as agent or depositary as aforesaid.

6. On April 19, 1933, a suit was begun in the New York
102 State Supreme Court by the said Moscow Fire Insurance Company and Paul Lucke as sole surviving director and conservator to determine the disposition of the assets in the custody of the said Bank of New York and Trust Company, as agent or depositary of the said Moscow Company and of the said Paul Lucke as surviving director and conservator. All known creditors and shareholders of the said Moscow Company were joined as parties defendant to the suit on their own behalf and on behalf of others similarly situated. A copy of the complaint in said suit is attached as an exhibit to the affidavit of John C. Vedder, the vice-president of the defendant Trust Company. On June 23, 1933, a second suit was begun in the New York State Supreme Court by a shareholder of the said Moscow Company against the said Bank of New York and Trust Company and others to obtain the instructions of the said Court with reference to the disposition of the funds of the said Company. The said suits were thereafter consolidated by order of the

New York Supreme Court and all the issues therein were referred by the said N. Y. Supreme Court to James F. Donnelly, Esq., of the City of New York, as Referee to hear and determine all of the issues in the said suits. The trial of the said suits began before the said Referee on March 16, 1934, and continued actively thereafter until August 9, 1934. On August 13, 1934, the United States by its attorney, Martin Conboy, United States Attorney for the Southern District of New York, filed with the said Referee a proof of claim entitled in the said suits, a true copy of which is hereto attached and made a part hereof, marked "Exhibit A." On August 4,
103 1934, at a hearing before said Referee with reference to said proof of claim, at which representatives of the U. S. District Attorney were present, the said Referee stated that he would withhold his decision in said suits for one week to allow time to the United States to take such steps as it should deem advisable with reference to such proof of claim. The United States having taken no further proceedings in said suits, but on the contrary having informed the said Referee that it did not intend to take any further proceedings in said suits, on August 21, 1934, the said Referee rendered his report to the Supreme Court of the State of New York, which was duly filed in the office of the Clerk of the County of New York on August 22, 1934. On August 22, 1934, judgment on the said report of the said Referee was entered and filed in the office of the Clerk of the County of New York and on said day served upon the said Trust Company. Such judgment directs the payment of certain remaining creditors of the said Moscow Company and further directs the payment from the balance of the funds of the said Moscow Company of a dividend in liquidation to the shareholders of the Company, without distinction as between shareholders residing outside of Soviet Russia and those residing within Soviet Russia. Said judgment was entered upon the report of a referee to hear and determine all issues in such suits as consolidated, a copy of which report is hereto annexed and made a part hereof marked "Exhibit B." There is further submitted to the Court herewith a copy of the opinion of James F. Donnelly, Esq., the said referee, which is marked
104 "Exhibit C" and made a part hereof, such opinion being submitted separately by reason of difficulty in binding it herewith.

7. All of the creditors of the said Moscow Company hereinbefore referred to with one exception, and a large number of the shareholders of the said Company are, as shown in the report of the said Referee, nonresidents of Russia and citizens of countries other than Russia. Certain of such creditors and shareholders are citizens of the United States.

8. No part of the funds and securities in the custody of the Bank of New York and Trust Company, as agent or depositary of the said Moscow Company and of the said Paul Lucke as surviving director and conservator, was ever within the territory of the State of Russia or within the control of the government of Russia. Such funds and securities constitute the residue of the capital of the

United States branch of the said Moscow Company and have never been within the possession, control, or subject to the order or confiscatory decrees of the present Soviet government of Russia.

FREDERICK B. CAMPBELL.

Sworn to before me this 11th day of September 1934.

[SEAL.] L. D. BATES,
Notary Public, Kings County.

Clerk's No. 274, Register's No. 6314.
N. Y. Co. Clks. No. 780, Reg. No. 6–B–439.
Queens Co. Clks. No. 421, Reg. No. 2290.
Commission expires March 30, 1936.

105 *Exhibit A, attached to affidavit of Frederick B. Campbell, verified September 11, 1934*

Supreme Court, New York County

MOSCOW FIRE INSURANCE COMPANY, OF MOSCOW, RUSSIA, AND PAUL LUCKE, as Sole Surviving Director of Moscow Fire Insurance Company, of Moscow, Russia, and Conservator of its Property, plaintiffs

against

BANK OF NEW YORK AND TRUST COMPANY, AS AGENT OR DEPOSITARY of said Moscow Fire Insurance Company, of Moscow, Russia, and of the said Paul Lucke, as Surviving Director and Conservator; et al., defendants

Proof of Claim

Now comes the United States of America by its attorney, Martin Conboy, United States Attorney for the Southern District of New York, and presents this Proof of Claim in the amount of $1,080,399.54, with interest from April 18, 1933, being the value of the surplus assets or funds of the plaintiff, Moscow Fire Insurance Company, released, paid, transferred, and delivered by the
106 Superintendent of Insurance of the State of New York, as liquidator of the plaintiff, Moscow Fire Insurance Company, to the defendant, Bank of New York and Trust Company, on the 18th day of April 1933.

The basis of the claim of the United States is as follows:

1. The plaintiff, Moscow Fire Insurance Company, of Moscow, Russia, a corporation organized under the former Imperial Government of Russia, did business in the United States and in the State of New York, and in relation to such business, deposited certain cash and securities as reserves in compliance with the statutes of New York, part of which funds are the aforesaid surplus or assets transferred to the defendant, Bank of New York and Trust Company, on the 18th day of April 1933.

2. By various decrees, the Union of Soviet Socialist Republics, successor of the Russian Imperial Government, dissolved the plaintiff, Moscow Fire Insurance Company, and appropriated all of its property.

3. By various decrees, the Union of Soviet Socialist Republics, successors of the Russian Imperial Government, appropriated all the rights, titles, and the interests of all stockholders in the plaintiff, Moscow Fire Insurance Company.

4. The Superintendent of Insurance of the State of New
107 York, pursuant to an order of the Supreme Court of New York, transferred the surplus of the assets in his hands after the payment of domestic creditors to the defendant, Bank of New York and Trust Company.

5. On or about April 19, 1933, this action by the plaintiff, Moscow Fire Insurance Company, was commenced and the relief and judgment prayed for was to determine the disposition of the aforesaid funds and securities in the hands of the defendant, Bank of New York and Trust Company; to determine the claims of creditors; to designate conservators to be authorized and directed to pay to the shareholders of the plaintiff company, their executors and assigns, outside of Russia on account of their respective ratable interests in the balance of the funds and securities hereinbefore specified, such amount as the Court shall determine.

6. In November 1933 the Government of the United States recognized the Government of the Union of Soviet Socialist Republics, and complete diplomatic relations were established between the Governments.

7. By an exchange of notes between the President of the United States and Maxim Litvinoff, People's Commissar for Foreign Affairs, Union of Soviet Socialist Republics, the Union of Soviet Socialist Republics assigned to the United States all claims in the United States of the Union of Soviet Socialist Republics, as successor of prior Governments of Russia and otherwise, and of their nationals.

108 8. By letter dated November 16, 1933, to the President of the United States, signed by Maxim Litvinoff, the Government of the Union of Soviet Socialist Republics agreed as follows:

"Following our conversations I have the honor to inform you that the Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counter claims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the

claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment."

109 9. By letter dated November 16, 1933, to Maxim Litvinoff signed by the President of the United States, the assignment of these claims was acknowledged.

Wherefore, the United States asserts its claim as a prior claim to all the assets specified hereinabove and prays that its prior claim in the amount of $1,080,399.54 be recognized and allowed, and that the defendant, Bank of New York and Trust Company, be ordered to pay over to the United States the amount of $1,080,399.54, with interest.

MARTIN CONBOY,
United States Attorney, Southern District of New York, Attorney for United States, Office & P. O. Address: U. S. Courts & P. O. Bldg., Broadway and Park Row, Borough of Manhattan, City of New York.

AFFIDAVIT TO VERIFIED CLAIM

STATE OF NEW YORK,
County of New York,
Southern District of New York, ss:

EDWARD J. ENNIS, being duly sworn, deposes and says, on information and belief:

That he is an Assistant United States Attorney in and for
110 the Southern District of New York, in charge of the prosecution of the claim of the United States, the creditor named in the annexed claim, against the Bank of New York and Trust Company.

That the annexed claim against the said Bank of New York and Trust Company is in all respects correct and true. That the sum of $1,080,399.54, with interest from April 18, 1933, is justly due and owing to the United States from the Bank of New York and Trust Company.

That said creditor holds no security for such claim. That no payment has been made. That there are no offsets or counterclaims thereto, either at law or in equity, to the best knowledge and belief of the deponent.

That the reason this affidavit is made by the deponent and not by the creditor is that the creditor is a corporation sovereign.

That the sources of deponent's information and the grounds of his belief are communications from the Department of State of the

United States, from the Department of Justice of the United States, and the records of the Office of the United States Attorney for the Southern District of New York.

EDWARD J. ENNIS.

Sworn to before me this 13th day of August 1934.

ARMAND CHANKALIAN,
Notary Public, New York Co.

Clerk's No. 327, Reg. No. 5C468, Commission expires March 30, 1935.

111 *Exhibit B attached to affidavit of Frederick B. Campbell, verified September 11, 1934*

REFEREE'S REPORT

(This exhibit is the report of the referee in the action in the N. Y. Supreme Court, the judgment in which action is hereinbefore printed and the opinion of the referee in the same action follows. This report consists of 109 typewritten pages of legal cap and is not printed by consent.)

Exhibit C attached to affidavit of Frederick B. Campbell, verified September 11, 1934

REFEREE'S OPINION

Supreme Court, New York County

MOSCOW FIRE INSURANCE COMPANY, OF MOSCOW, RUSSIA, AND PAUL LUCKE, as Sole Surviving Director of Moscow Fire Insurance Company of Moscow, Russia, and Conservator of its Property, plaintiffs

against

BANK OF NEW YORK AND TRUST COMPANY, AS AGENT OR DEPOSITARY of said Moscow Fire Insurance Company of Moscow, Russia, and of the said Paul Lucke as Surviving Director and Conservator; Assecuranz Union Von 1865; Carl Otto von Hollitscher and Paul F. Gottlieb, Copartners, Transacting Business Under the Firm
112 Name and Style of Heckscher & Gottlieb; Bertram Aymer Cater; Georg J. Fahrbach; Vladimir A. Miller; Michael Imchanitzky; and Fedor R. Amlong, Carl R. Amlong, Maria G. Arnaud, Alice F. Assmus [and 143 Other Named Defendants], as Stockholders of Moscow Fire Insurance Company, of Moscow, Russia, on Behalf of Themselves and all Other Stockholders Similarly Situated of said Moscow Fire Insurance Company, of Moscow, Russia, defendants

SAMUEL E. MORRO, MARIE LOBKOSCHEBOUNINE, BONA WIKTORJA Kruger, and Vladimir Velichko, in Behalf of Themselves and all Other Stockholders of Moscow Fire Insurance Company, of Moscow, Russia, plaintiffs

against

MOSCOW FIRE INSURANCE COMPANY, OF MOSCOW, RUSSIA, PAUL LUCKE and Bank of New York and Trust Company, as Agent and Depositary of said Moscow Fire Insurance Company, of Moscow, Russia, and of said Paul Lucke, defendants

Campbell & Whipp, Esqs., Attorney for Plaintiffs; Paul C. Whipp, Esq., Frederick B. Campbell, Esq., of Counsel.

Osmond K. Fraenkel, Esq., Attorney for Defendants; Vladimir Kentman, Andrei D. Pavloff et al.

113 Cabell, Ignatius & Lown, Esqs., Attorneys for Defendants, Heckscher & Gottlieb Assecuranz Union, and Vladimir A. Miller; Hartwell Cabell, Esq., of Counsel.

Engelhard, Pollak, Pitcher, Stern & Clarke, Attorneys for Defendants; Gerson Jakubovic, Meier Jakubovic, et al.; Frederic C. Pitcher, Esq., and George H. Hardinoff, Esq., of Counsel.

Henry Breckinridge, Esq., Attorney for Defendants, Eugenie M. Mikhailoff and Valentina N. Barthel-Mikhailoff Schott; James F. Phelan, Esq., of Counsel.

Samson Selig, Esq., Attorney for Defendant, Helene Tschitscherin; A. J. Multer, Esq., of Counsel.

Emmet, Marvin & Martin, Esqs., Attorneys for Bank of New York and Trust Company; Miss Elizabeth M. Graham, of Counsel.

114 Borris M. Komar, Esq., Attorney for Samuel E. Morro, Bona Wiktorja Kruger and Vladimir Velichko.

White & Case, Esqs., Attorneys for Defendant, Olga I. Hoppe; Thomas Kiernan, Esq., of Counsel.

Alfred L. Green, Esq., Attorney for Defendant, Michael J. Imchanitzky.

Michael J. Imchanitzky, Defendant in Person.

Vladimir A. Miller, Defendant in Person.

JAMES F. DONNELLY, *Referee:*

These are two consilidated actions for distribution of surplus of the Moscow Fire Insurance Company to shareholders after payment of certain claims of creditors and claims against said funds of Moscow Fire Insurance Company for services rendered in preservation thereof and investigation of the claims against said funds and later in aid of their proper distribution.

Moscow Fire Insurance Company is a Russian corporation organized in 1858 under the laws of the Empire of Russia and had been engaged down to November 1918, the date of the Russian Revolu-

tion, in the business of fire insurance in the Empire of Russia
115 and throughout Continental Europe and in the United States.
At the present time it is not engaged in business anywhere in the world.

About 1900 it established a United States branch, having made the deposit required by law to qualify, and it continued engaged in the transaction of said fire-insurance business in this country under an annual license obtained from the Superintendent of Insurance until about January 1, 1923. Four other Russian companies had likewise qualified and were doing business here at the same time, the Russian Reinsurance Company, the First Russian, the Second Russian, and the Northern of Moscow.

In August 1925, by reason of the consequences resulting from the Russian revolution the Superintendent of Insurance of this State took over the United States branches of several of these companies for liquidation because of the hazards and dangers threatening their assets and funds. Ordinarily, upon completion of the domestic liquidation and the payment of domestic creditors and policy holders, the surplus would be transmitted to a domiciliary receiver (Matter of Norsks Lloyd, 242 N. Y. 148; Matter of City Equitable, 238 N. Y. 147) and would not be disposed of in the ancillary or domestic jurisdiction. But in the situation presented to this Company and to other insurance companies because of their nonrecognition of the existing government in Russia by the United States at the time the liquidation
proceedings were completed in 1931, it became necessary, so
116 the courts adjudged, to wind up the foreign company in so far as its assets were represented by a surplus here.

The Soviet Government during the revolution had nationalized, sequestered, and confiscated all the assets of this and other companies; their liabilities were left unsettled and their officers and directors continued for a time in Russia to administer the business of the company, but in 1919–1920 many of the officers of these companies left for other parts of Europe in order to be in a position to conserve and dispose of the assets of these companies located in the British Isles, Continental Europe, and in the United States. By reason of the nonrecognition by the United States of the Soviet Government difficult problems in the surrender and disposition of these funds arose not merely in disposition of surplus of these insurance companies, but also because of the action of the Soviet Government in nationalizing these companies.

The history of these difficulties is dealt with in a series of litigations conducted in this country as well as in Great Britain, and elsewhere in Europe which resulted in a number of important decisions involving international law and interpreting situations confused by conflict of laws. These decisions affected not only these foreign insurance companies but many British companies, and United States banking and insurance companies, as well (Sokoloff v. National City Bank, 239 N. Y. 158; Petrogradsky N. K. Bank v. National City Bank, 253 N. Y. 23; Severnoe Securities v. Westminster Bank, 214

App. Div. 14; Sliosberg v. New York Life Ins. Co., 244 N. Y.
117 482; Severnoe Sec. Corp. v. London & Lancashire Ins. Co.,
255 N. Y. 120; Vladikavkassky Ry. Co. v. New York Trust Co., 263 N. Y. 369).

Not only did the action of the Soviet Government lead eventually to the liquidation of these insurance companies through the Superintendent of Insurance, but, prior to 1925, in advance of entry of the order of liquidation it induced the directors of these companies to leave Russia to seek a recovery of part of the surplus out of domestic branches of certain of these insurance companies, which efforts were successful to a degree (Andre v. Beha, 211 App. Div. 380; 240 N. Y. 605; First Russian Insurance Co. v. Beha, 240 N. Y. 601; Russian Re-Insurance Co. v. Stoddard, 240 N. Y. 149).

The liquidation order entered in 1925 affecting these insurance companies with its injunctive features prevented further action to take down deposits required by law or any part of the surplus until at least the liquidation was completed and the several efforts to take down the surplus of such companies were defeated in the courts.

The problem of final distribution of surplus, however, remained.

When, however, the liquidation was complete and the problem of distribution confronted the courts, it was finally determined that equity having taken jurisdiction it would continue to exercise its control even to the point of, in effect, liquidating a foreign company insofar as certain of its assets in this jurisdiction
were concerned. (Matter of People, Russian Reinsurance
118 Co., 255 N. Y. 415, 423; Matter of People, Northern Insurance Company, 255 N. Y. 433; Matter of People, Second Russian Insurance Co., 255 N. Y. 437; Matter of People, First Russian Insurance Co., 255 N. Y. 440.)

Ordinarily of course, this would not be done by our courts as to a foreign corporation organized under one of the laws of a foreign state unless there were peculiar or exceptional circumstances. (People v. Granite State Provident Association, 161 N. Y. 492.)

When the liquidation was complete, the Superintendent of Insurance requested that all surplus funds of these Russian Insurance companies be held until recognition of a government in Russia. The Supreme Court at Special Term and by unanimous affirmance at the Appellate Division (Matter of Russian Reinsurance Company, 229 App. Div. 637) accepted this view and ruled that the distribution of the surplus funds and the settlement of foreign claims and delivery of assets which normally would be sent and settled abroad should await recognition of a government in Russia. The Court of Appeals, however, felt that equity having taken jurisdiction should completely and at once dispose of the entire funds which were in the possession of the Superintendent of Insurance. As that court viewed the situation, domestic creditors and policyholders were paid; certain foreign creditors who had acquired liens by attachment before the liquidation was begun were also paid;

postponement of distribution of surplus meant unreasonable
119 delay and inasmuch as the Superintendent of Insurance had fulfilled his statutory trust there should be a present distribution in order to prevent further hardship and inequity.

Accordingly it was determined, wherever in any company there was a quorum of directors, that the funds should be turned over to the directors for disposition, but that where less than a quorum of directors existed the surplus would be received by the director or directors remaining, only upon furnishing a bond to apply the assets to the use of the corporation, its creditors and shareholders, or in the event of not giving a bond, to a trust company as depositary to hold it subject to further order of the courts.

Having provided that the surplus might be withheld by the Superintendent for a reasonable time after the entry of judgment in order to permit any creditors who had been stayed by the liquidation order from enforcing their remedies and to protect any liens that they might have, when the period limited by the court had been reached and such claims were paid or adjusted, the surplus was directed to be held for corporate uses and on the final distribution for the benefit of its creditors and shareholders.

In the case of the plaintiff company, it and its surviving director and conservator, Paul Lucke, consented by stipulation to have the final remaining surplus belonging to the company for such corporate uses turned over to the Bank of New York and Trust Company pursuant to the decision of the Court of Appeals (Matter of Moscow Fire Insurance Company, 255 N. Y. 433, 435).

120 Accordingly, on the 18th day of April 1933, pursuant to the remittitur handed down by the Court of Appeals and the stipulation entered into, the Bank of New York and Trust Company received from the Superintendent of Insurance the total surplus belonging to the plaintiff company.

In order to effectually distribute these funds and determine the rights of creditors, claimants, and shareholders, an action was begun about April 19, 1933, wherein the Moscow Fire Insurance Company and Paul Lucke were plaintiffs against Bank of New York and Trust Company with a number of shareholders and creditors as defendants. The summons in said action was served upon certain defendants personally and all other interested persons were duly served by publication pursuant to an order of this court entered on or about April 20, 1933.

Subsequently on the 23rd day of June 1933, another action was begun by stockholders, the plaintiff named being Marie Lobko-Schebounine, and in this action the plaintiffs in the first action and the Bank of New York and Trust Company were named defendants. Later, other stockholders were nominated in the title of said action as plaintiffs.

In this later action in addition to the usual relief sought in a stockholders action, the plaintiffs asked for the appointment of a Receiver to supersede Paul Lucke as conservator. In order to

effectuate, during the pendency of that action, this branch of
121 the relief, a motion for a receiver was made in the early stages of the action and for an injunction restraining any disposition of funds. This application was denied in toto by this court.

Later, an appeal was taken to the Appellate Division by the plaintiff from the order entered denying the application for appointment of a Receiver and an injunction. The order appealed from was later affirmed.

On the 13th day of October 1933 the issues in the first action brought were referred to me as Referee to hear and determine such issues.

During the progress of the reference in the first action, an order of consolidation was entered in the second action consolidating that action with the action first brought and a similar order of reference of the issues presented by the consolidated action were likewise referred to me to hear and determine.

The issues presented by the answers and counterclaims in some of the answers bring up for ascertainment and determination the rights of creditors and the rights of shareholders in the balance of the fund remaining after the claims were paid and the expenses of the action were met. The general purpose of both actions and the relief sought is to have the following dispositions made in reference to the funds—

1. That all creditors whose claims are decided in this action to be just, should be paid and the plaintiff conservator authorized and directed to make payments from the fund for that purpose.

2. That the compensation of the plaintiff conservator be
122 determined and paid; that the compensation of the defendant Bank of New York and Trust Company as agent or depositary be determined and paid; and that the allowance to counsel be determined and paid.

3. That out of the balance a fund to be fixed by the Court be reserved for any future contingencies including future necessary investigations as to shareholders who are not now known.

4. That all of the balance be divided pro rata among the shareholders of the company or their successors. That as to the shares of unknown shareholders, the balance in their favor remain on deposit with the Bank of New York and Trust Company until such unknown shareholder shall be ascertained and a further order of the court made with respect to them.

The securities in which the surplus belonging to the plaintiff company was invested during the pendency of this action were sold during the progress of the action, so that today the securities have been converted into cash resulting in a present cash surplus of $1,136,879.54. Most of the surplus was represented by corporate stock of the City of New York which was sold at a very satisfactory figure in order to reap the total surplus above indicated.

The fund as it is constituted in the Bank of New York and Trust Company after the conversion into cash and the amount of cash realized on the sale is as follows:

	Cash
123 Proceeds $500 City of New York 3½% corporate stock for Fire Department purposes due November 1, 1941, sold July 18, 1934, at 94 net plus interest	$473.69
Proceeds $30,000 City of New York 3½% corporate stock for Rapid Transit construction due November 1, 1949, sold July 18, 1934, at 93¾ net plus interest	28,346.67
Proceeds $583,000 City of New York 4% corporate stock due November 1, 1955, sold July 18, 1934, at 99⅝ net plus interest	584,214.58
Proceeds $235,000 City of New York 4% corporate stock due November 1, 1956, sold July 18, 1934, at 99⅝ net plus interest	235,515.68
Proceeds $150,000 City of New York 4% corporate stock for water supply due November 1, 1956, sold July 18, 1934, at 99⅝ net plus interest	150,312.50
	998,863.12
Cash otherwise on hand	138,016.42
	1,136,879.54

The proof presented before the Referee was received during
124 a period of five months during which time numerous claims of creditors were established and proof to determine the rights of numerous stockholders was presented. The following facts appear from this proof:

The capital of the Moscow Fire Insurance Company consisted of 2,000,000 rubles which was represented by 10,000 shares of stock issued and outstanding prior to the Russian revolution. The par value of each share was 200 rubles and all of the shares were registered.

The company kept a list of its shareholders and a certified list of such shareholders was presented to each annual meeting. At the last annual meeting of shareholders of the company on April 11, 1917, there was presented an alphabetical list of shareholders and when Mr. Lucke left Russia to go into France, where he had taken up his residence at Paris, he took with him these original documents which contain certain corrective notations made by him thereon in the course of business after 1918. Those notations and changes brought the shareholders list up to the date of November 15, 1918. This shareholders list, in the Russian language, was presented in evidence in order to establish a foundation for proof of the shareholders rights to the net surplus remaining after the claims of creditors were paid.

The claims of shareholders involve 140 living shareholders, 14 shareholders who assigned their shares and 100 shareholders who are dead and whose shares are the subject of disposition. The total number of shares presently represented by the above number
125 of shareholders aggregates about 6,500 shares out of a total of 10,000 shares. After the claims of creditors and the expenses of the action have been paid and a fund for future expenses has been set aside, disposition of the surplus would go to the foregoing shareholders or their assigns, or their legatees, heirs at law and next of kin.

Prior to the presentation of proof in the action an exhaustive and painstaking inquiry in Europe, outside of Russia with reference to the rights of creditors and shareholders was made by the plaintiff Paul Lucke. That investigation resulted in some instances in compromise and settlement and the negotiations leading up to the compromise and settlement were related in the proof submitted and where adjustment was reached it was submitted for the approval of the Referee. My findings with respect to such claims follow:

The defendant, Georg J. Falirbach of Riga, Latvia, had been an agent of the plaintiff company for some time prior to the Russian revolution and had a personal account with the company which on January 1, 1917, showed a balance in his favor amounting to 57,337.37 rubles. The proof established that the total balance in said defendant's favor was thereafter reduced so that at the time these proceedings were begun, the company owed him the sum of 56,134.74 rubles. The plaintiff Paul Lucke entered into negotiations with said Fahrbach in order to adjust and settle his claim as between the claimant and the company. The claim was adjusted in dollars for the total sum of $5,600, which represented an exchange value
126 of slightly less than 10 cents per ruble. The settlement and adjustment of this claim according to proof presented was a fair and reasonable adjustment and was made for the best interests of the company and its shareholders. The account and settlement are accordingly approved and the funds of the plaintiff company will accordingly be charged in favor of Georg J. Fahrbach in said sum of $5,600.

The defendant Brandforsikrings Selskabet Norge Drammen is an insurance corporation organized under the laws of Norway with a principal office in Drammen, Norway. This defendant did reinsurance business with the plaintiff company. During the period shortly prior to the Russian revolution a treaty of reinsurance was entered into by and between the Norwegian company and the Moscow Fire Insurance Company whereby the Norge Drammen reinsured certain risks assumed by the Moscow as the direct writing company. Resulting from this business a substantial balance accrued to Norge Drammen, the precise amount of which was disputed by the plaintiffs. Accordingly, Paul Lucke conducted negotiations with reference to an adjustment of this claim. The claim was later compromised and settled between the parties at $10,500 on April 13, 1934. The proof before the court established the treaty and the addendum thereto, and the monthly balance and books of account satisfactorily show to the court that a balance (in excess of the settlement) existed in favor of the Norge Corporation. The adjustment appears to be in settlement of a just claim, is reasonable in amount, and the
127 acceptance and payment of this claim is for the best interests of the Moscow Company and its shareholders and it is therefore approved.

The Brandforsikrings Selskabet Norge Drammen is entitled to recover of the Moscow Fire Insurance Company the said sum of $10,560 with interest thereon from April 13th, 1934 as agreed upon the adjustment.

The defendant Holger Zahle is an assignee of an insurance corporation of Stockholm, Sweden, known as "Forsakringsaktiebolaget Skandia."

This company and the Skandia entered into certain reinsurance relations under a treaty and an addendum thereto, whereby the Skandia reinsured certain risks assumed by the Moscow Fire Insurance Company, the direct writing company. Out of this business a substantial balance accrued in favor of Skandia. The precise balance is in dispute. Under another treaty wherein the corporation Skandia was the direct writing company, the plaintiff company was reinsurer. Out of this business an admitted accrued balance in favor of the plaintiff company as of December 31, 1918, resulted, to wit, the sum of 6,266.76 Kronen. The proof is that negotiations for a compromise and settlement under consideration during the trial before me were continued and finally it was agreed after giving credit for a certain balance of Swedish Kronen in favor of the Moscow Company that its claim be adjusted for $5,750. The adjustment agreed upon was to carry interest from the date of adjustment, to wit, April 13, 1934. Since this is a reasonable
128 adjustment for Moscow Fire Insurance Company and its shareholders, it is approved.

The defendants Gerson Jakubovic and Jaffe (nee Jakubovic) are the heirs and next of kin of one E. Jakubovic, deceased, late of Mitau, Russia. The Moscow Fire Insurance Company duly insured certain premises owned by asid Kakubovic against loss by fire for a period of twelve months beginning April 16th, 1915, in the sum of 22,345 rubles. While the policy was in force and effect the premises insured were damaged by fire resulting in a loss equalling 3,800 rubles.

The Moscow Company admits liability for said sum as of June 1, 1916; the claimants have accepted an offer of adjustment made by the Moscow Company in dollars totalling $1,102 with interest from June 1, 1916, at the rate of 4.9% per annum. The facts justify this compromise as it is for the best interests of the Moscow Company and accordingly it is approved.

On July 17, 1918, Robert Natus was the owner of a dye factory in Esthonia upon which a policy of insurance protecting the said premises against fire loss had theretofore been issued by the plaintiff company. Claimant's factory was later damaged by fire while the policy was in force and a resulting loss for which the insurer was liable equalled in rubles 17,754.80, the equivalent at that time of $2,308.12 in American dollars. The total claim presented in this action with interest amounts to $4,523.92. The plaintiffs en-
129 tered into negotiations with Natus for a compromise of said claim with the result that the differences between the parties

were composed at $3,416.02. Such settlement appears to be sound and in the best interests of the company and the shareholders, and is approved.

Many years prior to the outbreak of the Great War in Europe and continuously thereafter up to the period in November 1916, when the Russian government issued a decree forbidding all relations between Russian Nationals and German Nationals, the defendants Carl Otto von Hollitscher and Paul F. Gottlieb, doing business under the name of Heckscher & Gottlieb in Berlin, Germany, were agents and Managers of the Moscow Company. During this period as such managers and agents they transacted the business of the Moscow Company in Germany and elsewhere. They earned during this period of time substantial commissions from the Moscow Fire Insurance Company which have never been paid to Heckscher & Gottlieb.

After the Great War had been concluded and after the plaintiff Paul Lucke left Russia and entered Germany, he negotiated with Carl Otto von Hollitscher and requested that he and his firm render services to Moscow Fire Insurance Company looking to an adjustment and settlement of the many claims which were outstanding against the Moscow Company. These services were rendered in Germany and elsewhere and were of substantial benefit to the Moscow Fire Insurance Company and were performed at the request
130 of Paul Lucke who, under the circumstances was authorized to employ the firm of Heckscher & Gottlieb to render such assistance as was necessary to wind up the affairs of the Moscow Company in Continental Europe and Great Britain. Heckscher and Gottlieb have come into this action to recover payment for the commissions so earned, to also recoup certain balances, and to recover the value of the services rendered.

The claims which were advanced by Heckscher & Gottlieb were under three different headings:

1. Royal insurance commissions;
2. Marks claim;
3. Claim for services rendered.

The commissions which they were to receive related to that part of the Royal Insurance business which was reinsured with the Russian Reinsurance Company and retroceded by the Russian Reinsurance Company to Moscow Fire Insurance Company. The commissions agreed upon between the parties upon this business was at the rate of 5% and there can be no doubt that the weight of evidence clearly establishes that there is due upon this business to Heckscher & Gottlieb from the Moscow Fire Insurance at least the sum of $23,500 and were I called upon in this proceeding to make a finding with reference to this sum it would be in such amount.

Similarly, I would find against the claim of Heckscher & Gottlieb under the claim for the marks balance. It would seem that
131 there was owed Marks 7,312.58 to Heckscher & Gottlieb by the Moscow Company in the year 1919. It arose from certain

items originally charged by Heckscher & Gottlieb to Moscow Fire Insurance Company during prior years. Some of these items were in Dutch and Swedish currencies which were immediately converted into marks in the accounts between the parties. This balance was carried forward into the account and it is clear that other entries made in the accounts conclusively establish that by 1923 there was nothing owed to Heckscher & Gottlieb on account of any marks balance. On the contrary, it would appear that Heckscher & Gottlieb owed the Moscow Fire in Marks 128,000. Later, this amount was written off, the reason being that the mark had become so valueless that it could not be revalued into the new Reichsmarks then adopted as the new currency in Germany.

After having practically adjusted, balanced, or wiped out this claim upon their own books they could not revive it and seek to claim a claim in gold value for this old 1919 balance by specifically segregating it out of the accounts in an effort to give it individual vitality as a claim although it had been extinguished and merged in the adjusted balance.

The third branch of their claim relates to services rendered after the year 1920 in the adjustment of various claims which Moscow had against many insurance companies and which many insurance companies and agents had against the Moscow Company.

Lucke when he left Russia had very few papers or docu-
132 ments of his company with him. He might have had some general knowledge of the state of the various claims and accounts, but unless he was aided in some way he would have had very great difficulty in adjusting and settling these many claims which arose out of reinsurance treaties with the Moscow Company.

Lucke called upon Heckscher & Gottlieb to assist him, and Dr. von Hollitscher aided him in various ways. It is true Heckscher & Gottlieb were agents for the Moscow Company and owed some duty as agents to assist the plaintiff company and Lucke. The services which they rendered were apparently considered by Mr. Lucke as in excess of their obligations as agents and he supports their claim for services and agrees that the services which were rendered were valuable to the Moscow Company. But as to these further claims there is also no occasion for finally deciding them in this action for the reason that on June 21, 1921, Lucke, acting for Moscow Fire Insurance Company, entered into an agreement with Heckscher & Gottlieb to settle and compromise these claims against the Moscow Company for the flat sum of $30,000 payable as and when the money would be available for payment out of the American funds of the Moscow Company which are the subject of distribution in this action.

I am of the opinion that Lucke had the authority to make this adjustment; that the adjustment is reasonable and fair; and that considering the Royal claim for commissions to be allowed
133 at $23,500, the pay for services also allowed and included within the grand total of this settlement would be represented

by the sum of $6,500. This amount for the work done in England and Germany would not appear to be excessive. On the whole it would appear that the settlement was for the best interests of the company and it would seem that it should be allowed and enforced, but without interest, as the letters passing between the parties expressly provided that it is payable not only without interest, but at a future date, as and when the funds involved herein were available for its satisfaction and payment.

The defendant Assecuranz Union von 1865 is an insurance corporation of Cologne, Germany. Prior to the promulgation of the Russian decree of November 1916, which prohibited intercourse between Russian and German nationals, the Moscow Company had become reinsurer under various treaties of reinsurance made between the Moscow Company and German and Austrian companies, among others, the Aachen and Munich Fire Insurance Company, the Berlinische Fire Insurance Company and the Bavaria Insurance Bank Company, Ltd. When this decree of November 1916, was issued by the Russian Government it became necessary to substitute another company as reinsurer under these various treaties of reinsurance.

Accordingly, the defendant Assecuranz Union von 1865 was so substituted under an agreement and arrangement which provided that
the Assecuranz Union von 1865 would be reimbursed by the
134 Moscow Company for the net amount of any loss sustained
by the Assecuranz Union because of such substitution.

The proof establishes that there did result a loss to the said Assecuranz Union von 1865. This loss is represented by the amount paid by the Union on or prior to July 1, 1927, the date of the last entry in the Assecuranz Union accounts with the Moscow Fire Company. The items were represented by different classes of currency as follows:

Reichsmarks	495.23
Dutch florins	2,681.25
Swedish Kronen	7,329.27

Inasmuch as these amounts were carried by the Assecuranz Union in a running account the rate of exchange should be taken as of the time when the account came to an end, rather than, as contended by the claimant, that the rate of exchange should be taken as of each date that the money became due under the contract. In other words, the proper holding should be that the cause of action arose on July 1, 1927, and the rate of exchange should be fixed accordingly at the date of breach, exclusive of interest (Gross v. Mendel, 171 App. Div. 237; aff'd 225 N. Y. 633; Hoppe v. Russian Asiatic Bank, 253 N. Y. 37; Park v. Hoppe, 257 N. Y. 333, 341; 258 N. Y. 365).

On this basis as of July 1, 1927, the indebtedness represented by these various currencies converted into dollars was the equivalent of $3,155.12 in United States currency.

The claimant Bazile Gartoung was, in 1918, assistant man-
135 ager of Moscow Fire Insurance Company, under a written
contract of employment dated February 10, 1916. This con-

tract entitled him to the sum of 14,000 rubles for each of the years 1919 and 1920. He was also entitled to receive certain sums representing a commission based upon profits resulting from the business of the company for the year 1918.

The claimant entered upon the performance of his duties and continued the performance thereof satisfactorily up to April 1, 1919, the time of the completion of the liquidation of the company by the Soviet Government. He received his salary up to the end of the year 1918. He did not receive any part of the special compensation or bonus for the year 1918 which is referred to in paragraph 4 of the agreement, nor did he receive any salary after 1918, equivalent to 4,000 rubles. The plaintiffs entered into negotiations with the claimant Gartoung for adjustment of this claim in the aggregate of 32,000 rubles with interest thereon from January 1, 1919, and have entered into a compromise of the same at the flat sum of $3,500. This compromise is fair and is in the interest of the stockholders and it is therefore approved.

The defendant, Vladimir A. Miller, a former Russian lawyer, now a resident in Paris, France, in the year 1923 was engaged by the plaintiff Paul Lucke to assist him in guarding and protecting the assets and the affairs of the plaintiff company. From that time down to the present time he has been engaged in the rendition of substantial and beneficial services to the Moscow Company,
136 both in connection with the affairs here in the United States as well as the liquidation of the company's affairs in Europe outside of Russia. In 1924 he entered into an agreement with the Moscow Company whereby he was to be compensated for the services which he rendered under his employment agreement at the rate of $1,000 a year, and in addition he was to receive a 1½% commission upon the United States surplus, that is to say, his commission was to be calculated on the same basis as that under a similar contract which the company had made with Messrs. Campbell & Whipp, but at a different percentage. It is clear that the intention of the parties in making this agreement was that the contingent commission which Miller was to receive, based upon the percentage agreed upon was to be calculated upon the total surplus of the United States branch remaining in favor of the Moscow Company after the payment of American policyholders and creditors and exclusive of foreign attachment claims.

Any argument directed as to what is the true surplus of the company and whether in order to ascertain the same, foreign attachments should be deducted is wholly aside from the question here involved, which is one requiring a determination as to the basis upon which these parties agreed.

The United States surplus of the said Moscow Company remaining after the payment of United States policyholders and creditors and before payment of foreign attachment claims amounted to $1,665,054.76. The contingent percentage of 1½% thereon to which

the claimant is entitled therefore amounts to $24,975.72, and
137 according to the agreement of the parties bears interest from August 11th, 1931, the date of the entry of the order of the Supreme Court entered upon the remittitur sent down by the Court of Appeals, which fixed the total United States surplus funds. The proof establishes that Miller has been paid on account of his fixed compensation of $1,000 a year, the sum of $673.31, which is the dollar equivalent of 16,000 French francs paid to him between September 1924 and October 1933. Accordingly, the claimant Miller is entitled to recover the sum of $34,975.82, reduced by $673.31, leaving a balance of $34,302.21 owed to him, together with interest on $24,975.82 from August 11, 1931, and interest upon each unpaid $1,000 balance from its due date.

While the defendant Miller was engaged in assisting Lucke in Europe for the purposes just indicated, another Russian lawyer, the defendant Michael Imchanitzky was similarly engaged by Lucke and sent to the United States to assist there in closing the affairs of the Moscow Company. This defendant, also a Russian lawyer, rendered substantial services as Russian counsel from August 11, 1931, down to the present time. These services were rendered partly here and partly abroad and no specific arrangement was made with him, his compensation being left to a quantum meruit payment. When the question of his compensation came up, the matter was discussed and Mr. Lucke on behalf of the Moscow Company and the defendant Michael Imchanitzky agreed between them that up to the commencement of the reference that he should receive
138 $8,000 in full payment of all claims up to that point, the adjustment being based on $6,000 for services and $2,000 for disbursements necessarily incurred by him for the benefit of the Moscow Company. In addition to this amount, which was thus adjusted between the parties, the claimant has established in the hearings before the Referee that he rendered further services to the plaintiffs during the period covered by the present reference and his claim as to this is left for determination by the Referee. The proof here establishes that the fair and reasonable value of these services is $3,750, and the defendant is accordingly entitled to recover this sum in addition to the $8,000 as adjusted.

In the year 1920, Paul Lucke left Russia. For a long period of time he had been general manager and director of the Moscow Fire Insurance Company. His father also had been general manager of the company before him. When he left Russia several other directors left about the same time and went into other parts of Europe. By the time the liquidation was completed and in 1931 the Court of Appeals determined the disposition of the surplus of the company, Paul Lucke was the sole surviving director of the Moscow Company and was, by the terms of the decision of the Court of Appeals in this case, made the conservator of assets and surplus of the company down to the present time. Mr. Lucke has been engaged

from 1920 to this date in continuous and arduous services in adjusting and settling the affairs of the Moscow Company in Europe as well as in the United States. The services which he rendered
139 to the company were surrounded with many difficulties and they were most loyally rendered. It was indeed fortunate that a man with his intimate knowledge of the affairs of the company and the personnel of its shareholders has been available to present to this court the picture that he has given, otherwise the tangled affairs of this company would have been most difficult of any satisfactory solution.

When he left Russia he naturally left with very few records of the company. Most of the records had been taken over by the Soviet Government. In the course of the subsequent years these records were stored in confusion in various parts of Russia and many of them had been destroyed, as the history of these records developed in the course of the Russian insurance litigation in this state attests. Notwithstanding the difficulties which surrounded his investigations and his services he entered upon a thorough and exhaustive investigation of the numerous claims through which he has surmounted many of the hurdles which beset his progress. The investigations which he conducted related to an ascertainment of assets abroad and of the liabilities of the company under existing obligations arising under outstanding treaties of reinsurance or contracts which obligated the company as a direct writing company. Through the aid of Mr. Miller and the intelligent support of Frederick B. Campbell and Paul C. Whipp, aided by Mr. Imchanitzky, Mr. Lucke worked out a settlement and adjustment of a number of claims against the company existing in various parts of Europe outside of Russia
140 and accomplished very satisfactory and praiseworthy results in all of his endeavors.

For these services he has presented in this action a claim for compensation. While he was of the opinion that his services were worth to the company $10,000 per year, in interposing his claim he asks only to be compensated at the rate of $7,500 per annum. Certainly in the light of his zealous and laborious efforts this annual stipend ought to be considered a very moderate obligation for the company to satisfy. Lucke has rendered services in Russia, in Continental Europe, in Britain and in the United States from the beginning of 1919 up to the present time. At the rate of $7,500 per year, the total amount asked for by him would aggregate $116,000.

During the course of his activities in Russia certain funds came into his hands as surviving director of the company and out of these he paid to himself on account of his compensation and for living expenses the sum of $56,000. Crediting this claim with this amount received there remains a further sum of $60,000 due him for these services, which he surely is well entitled to receive. In the course of the hearings he presented an account to this court in which are detailed the monies received by him and the disbursements which

he made on account of the Moscow Fire Insurance Company as of May 1, 1934.

This account sets out all of his receipts and disbursements. The total receipts in dollars was $80,923.94 against which he expended $78,078.35 as follows: $10,078.35 for payments to employees,
141 $12,000 for traveling expenses and $56,000 on account to himself as above stated. The total amount of francs which he rereceived was 365,879.17 against which he expended 256,023.15 as follows: payments to creditors, 37,574.40; legal expenses, 49,205.60; traveling expenses, 60,578.35; miscellaneous expenses, 65,486.63, and as advances for account of indigent shareholders, 43,178.18. After these expenditures there remained in his hands on May 1, 1934, $2,845.59, 109,856.01 francs, and £490.5.3. These funds are to be held by Mr. Lucke for the purposes of the Company and for which he of course shall be held accountable in the future.

Naturally, surrounded as he is with the difficult problem of adjusting the affairs of the company, he has had to expend for the general benefit of all many sums in investigation which related, as events turned out, to individual cases and individual benefit. But the expenditures were necessarily made with the hope of ascertainment of the whereabounts of all of the shareholders so that they might all be brought before the court with a view to adjusting their rights. Naturally, it was difficult for him, an exile of Russia, to deal with a new government in Russia which was hostile to him and to men of his type who had been leaders under a capitalistic system which the Soviet ideals had abolished. They had established a new and different form of government which was also hostile to a distribution in accordance with individual ownership and our principles of
142 justice. Clearly whatever charges he made in his investigations are properly general charges against the fund at this time. It may be that any expenditures which shall be hereafter made shall be made only for the benefit of individual shareholders and chargeable against any liquidating dividend later received by such shareholders on account of any holdings. Many of the shareholders whose rights to the liquidating dividend are hereinafter referred to and determined have expended against their prospective liquidating dividend monies necessary for procuring documents and certifications essential to their proof, without asking the general fund to first reimburse them, though these shareholders have in turn, by virture of the manner in which the investigation has been conducted up to now, been proportionately benefitted through the discovery and presentment of all claims investigated through the efforts of Mr. Lucke.

Considerations of equity however woud seem to require that as to the future if charges are made they should be made against particular shareholders' rights. These considerations also require that there will be repayment to the company out of the liquidating dividend received by shareholders any advances made to these shareholders which

appear in the account of Paul Lucke as having been made to these shareholders while in need as indigent shareholders.

A further claim against these surplus assets of the plaintiff company has been presented by Frederick B. Campbell and Paul C. Whipp, members of the bar, who have been employed by and
143 have rendered valuable legal services to the plaintiffs, Moscow Company and Paul Lucke as conservator of its funds since August 11, 1931, down to April 19, 1933, the date when this action was begun. These claimants are seeking compensation for these services in this action and have presented proof establishing that the fair and reasonable value of services rendered is $17,500. The amount asked is, in my opinion, entirely reasonable and fair, since, for the services rendered to the Company these attorneys in my opinion could have justly asked and been allowed a larger compensation. In addition to owing these attorneys for services rendered the Company is under further obligation for a balance to them for disbursements made on account of plaintiffs. These disbursements aggregate $1,614.33, against which $1,239.34 was paid, leaving a balance of $374.99 owed for disbursements by plaintiffs to these claimants. The claims of Messrs. Campbell & Whipp are therefore allowed.

The claimants, Lorantz & Kresche, a stock company of Zgierz, Poland, were holders of fire policy No. 64830 which insured certain property of the stock company against fire loss in the sum of 12,125 rubles, said insurance policy being dated April 15–28, 1914. There were other policies outstanding covering fire losses against the property of this company as follows:

Policy No. 65219—42,699 rubles, dated June 15–28, 1914; Policy No. 65217, dated the same date, for 37,500 rubles; Policy No. 64210, dated October 29–November 11, 1913, for 20,299 rubles.
144 The claimant while the policies were in force suffered a fire loss and became entitled to compensation on account of the same under these various policies of insurance. There was evidence that this loss was found in favor of the claimants by judgments of the District Court in Warsaw, Poland, dated November 20–25, 1933, and a further judgment in the same court dated May 28–June 4, 1934. The plaintiffs negotiated for a settlement of this claim and agreed that $20,000 should be paid as a flat sum in settlement thereof. This settlement and adjustment is considered fair and is approved.

The proof in this case shows that there are no further claims existing or outstanding against the Moscow Fire Insurance Company except as they have been hereinafter stated.

The complaint in this action alleges in addition to the claims hereinbefore discussed a claim of Bertram Aymar Cater of London, England, for services and disbursements as representatives of the Moscow Fire Insurance Company in connection with negotiations and management of the reinsurance business in London of the plaintiff company and the closing of its English branch. The amount of this claim is alleged at the sum of $21,000. No proof was presented during the hearings in support of this claim. There was

likewise presented during the hearings a claim of Elizabeth Buttmann, widow of an employee of the Moscow Fire Insurance Company who died on January 5, 1911, and who was granted a
145 pension of 450 rubles per annum, which was unpaid since 1917.

It was asserted on behalf of the Moscow Fire Insurance Company that it never paid any pensions to its employees and that there was a separate corporation regularly organized under the laws of Russia which handled pensions of Moscow Fire Insurance Company and that therefore the plaintiff company was not liable at all for any compensation claimed. It was asserted also that the employees as well as the company contributed to this fund and that when the assets of various companies were confiscated by the Soviet Government the assets constituting this fund were seized and confiscated and all means whereby any claims similar to that of this claimant could be compensated were lost. The attorney for this claimant indicated that his own subsequent investigations confirmed the assertions of the plaintiff.

The summons in this action has been served either personally or by publication upon all of the defendants in this action which is brought in rem for the distribution of these funds. The action is a class action, brought for the benefit of all shareholders of this corporation and for a distribution to them of their respective distributive shares of the net surplus left after the payment of claims and expenses against these funds. In such type of action this Court has power to issue process the service of which will effectually bar the rights of those who fail to appear and present claims against, or rights in a fund (Pennoyer v. Neff, 95 U. S. 679; Manson v. Williams, 213 U. S. 453, 455).

146 The judgment to be entered in this action is to have provision made therein for further applications at the foot of the judgment. By this provision, in addition to the interim payment which is provided for herein, all shareholders who are presently known may hereafter receive their entire distributive share and the balance may be held by the defendant trust company and the plaintiff conservator until the claims of unknown shareholders are ascertained and established from time to time and paid out pursuant to the orders at the foot of the decree.

As indicated above, at the time the plaintiff Paul Lucke left Russia, he took with him a shareholders list which was the list used by the company at its last annual meeting of creditors which was held on April 11, 1917. This list was revised down to November 15, 1918, and was in evidence in this action. In November 1918, prior to the Russian decree of December 1, 1918, which terminated the business of the plaintiff company in Russia, there were 579 shareholders of record, each owning and holding the respective shares appearing opposite their names on this shareholders list. Their total holdings aggregated 10,000 shares, or the total number of shares of the company issued and outstanding. Out of this total

of shareholders only 140 living and 14 who have assigned their shares have appeared in this action. In addition to these, approximately 100 shareholders who have died are represented in this action and proof as to their respective rights is before the court. These shareholders represent however an ownership of approximately 6,500 shares.

147 The total amount of claims allowed by me as above indicated aggregates approximately $206,950.64. The total surplus on hand is $1,136,879.54. There will, of course, be further expenses against this fund to be paid by the depositary as well as such allowances and costs as may be awarded. Further expenses may possibly be general charges against the fund, or may be chargeable solely against individual distributive shares. At the present time, however, it is easily possible to set aside $436,879.54 to meet all the present claims of creditors and any future claims which may be presented after publication for the same. This sum thus set aside will also be sufficient to provide for expenses, allowances, and costs. Out of the remainder it is feasible and proper at this time to distribute to known shareholders, assignees, and representatives and successors of deceased shareholders the sum of $700,000 to be distributed pro rata to those entitled in the proportion of $70 for each share issued and outstanding, and a like amount to be set up and held for proof of ownership of each unknown shareholder.

The findings will indicate what shareholders are known and classify those who are living and who have assigned their rights and interests in shares and those who are dead and those who represent them either by way of provision made under a will or as next of kin and heirs at law. Awards are made to these in accordance with the proof.

148 These payments should be made by the depositary to these shareholders or to their attorney in fact whose right to receive the same has been established in the proof, except in the case of shareholder No. 260 shown on the Russian list of shareholders, Credit Lyonnais, whose distributive share in the liquidating dividend would equal $2,560. This payment should be withheld and charged with an offset in favor of the Moscow Fire Insurance Company which it is claimed will exceed this sum of money. Eventually, if it is established that the Moscow Company is entitled to withhold this entire amount as an offset, it will fall into the surplus to be distributed pro rata to all shareholders in accordance with their respective holdings.

The findings submitted to me have been passed upon and, if desired, a formal or engrossed decision may be presented for signature upon which the clerk will then enter a decree.

149 In United States District Court, Southern District of New York

[Title omitted.]

STATE OF NEW YORK,
County of New York,
Southern District of New York, ss:

Valerian E. Greaves, being duly sworn, deposes and says:

1. I am a consultant on foreign law with an office at 2 Rector Street, Borough of Manhattan, City of New York.

2. I was born in the Empire of Russia in 1876 and I continuously resided there until June 1918. I was graduated from the Imperial Law School of Russia with highest honors. Upon graduation I served two years as secretary to the Attorney General of Siberia and one year as secretary of a Committee appointed to liquidate penal deportation to Siberia. Subsequently, I joined the Bar
150 and practiced law as a notary of the Supreme Court at St. Petersburg from 1903 to 1918. I served as a member of a committee appointed to draft a new Civil Code for the Russian Empire (subsequently adopted by the Soviet Government as a basis of the Soviet Civil Codes). I served as a member of the Juridical Council of the Provisional (Kerensky) Government of Russia in 1917, which was a body consisting of nine members chosen from the Justices of the Supreme Court of Russia, professors and practicing attorneys, to advise the government on legal matters and on the constitutionality of its decrees.

3. Since 1921, I have been a consultant on foreign and international law in the City of New York. I have been continuously engaged in the study and advisory practice on matters of Soviet law. I am a member of the Committee on Foreign Law of the Bar Association of the City of New York and as such I have been specifically engaged in the examination of questions of Soviet law on which I have prepared several articles for the Bar Association. I am a member of a committee appointed by the Section of International and Comparative Law to report to the 1934 annual convention of the American Bar Association on the essential features to be included in the proposed commercial treaty of the United States with the Union of Soviet Socialist Republics, and as a member of such committee have prepared several papers for the committee report. I acted as leader at a conference on Soviet Law at a meeting of the Section of International and Comparative Law of the American Bar Association.

151 4. In the course of my professional and scientific studies of Soviet Law, I have become familiar with the Soviet law concerning the nationalization of insurance and other private business enterprises and in my opinion I am able now to state the correct application of Soviet law to insurance enterprises.

5. I have examined a decree of the Council of People's Commissars "on the organization of insurance business in the Russian Republic", dated November 28, 1918, published in the "Izvestiya of the All-Russian Central Executive Committee of Soviets" (official newspaper), No. 263, on December 1, 1918, and subsequently republished in the Collection of Decrees and Orders concerning the National Economy, Volume 2, pages 720, 721, a copy of which is attached to the affidavit of Edward J. Ennis in support of the order to show cause herein. The said decree is a duly enacted law of the Soviet Government and as such went into full force and effect on the date of its publication.

6. The said decree expressly proclaimed insurance in all its aspects and forms to be henceforth a State monopoly, and all private insurance companies and organizations, whether stock or mutual to be subject to immediate liquidation (with the exception of cooperative organizations engaged in mutual insurance of movable property and merchandise). The assets of all of the said private insurance companies and organizations were declared to be the property of the Soviet State by a special provision of the said decree pro-
152 claiming that all assets of said private insurance companies outstanding upon liquidation became property of the Soviet State. It is my opinion, based on the express text of the said decree and my knowledge of the Soviet legal terminology that the said decree declared all assets of the private insurance organizations which were subject to liquidation to be the property of the Soviet State. The expression in the Russian text of the said decree "vse imustchestva", equivalent to the English expression "all properties", comprises all assets without exception regardless of what they may consist and where they may be located and extends to all tangible things outside of Soviet territory and choses in action including those against foreign debtors.

7. Neither the said decree, nor any other law, decree, instruction, interpretation, or other enactment of the Soviet Government contains any provision indicating that the Soviet Government originally intended to exclude or subsequently excluded from the operation of the said decree any assets of private insurance concerns referred to in the said decree including assets outside of Soviet territory.

VALERIAN E. GREAVES.

Sworn to before me this 24th day of September, 1934.

ARMAND CHANKALIAN,
Notary Public, New York Co.

Clerk's No. 387, Reg. No. 5C463.
Commission expires March 30, 1935.

153 In United States District Court, Southern District of New York

Notice of filing of documents, in support of motion to dismiss complaint

[Title omitted.]

SIR: Please take notice that, upon the argument herein, the defendant will file with the Court (a) a copy of the annexed photostat copy of the proof of claim filed by complainant with James F. Donnelly, Esq., the Referee in the State Court proceedings, and affidavit relating thereto; and (b) letter from the Secretary of State dated September 24, 1934, and authenticated copy of letter referred to therein, copies of which are annexed hereto.

Dated, New York, October 2, 1934.

Yours, etc.,

EMMET, MARVIN, & MARTIN,
Solicitors for Defendant,
Office and P. O. Address, 48 Wall Street, New York City.

To MARTIN CONBOY, *Esq.*,
U. S. District Attorney,
Solicitor for Complainant.

154 *Affidavit of Frederick B. Campbell, verified October 2, 1934, attached to notice of filing documents*

United States District Court, Southern District of New York

IN EQUITY 78/377

UNITED STATES OF AMERICA, COMPLAINANT

against

BANK OF NEW YORK AND TRUST COMPANY, DEFENDANT

STATE OF NEW YORK,
County of New York,
Southern District of New York, ss:

FREDERICK B. CAMPBELL, being first duly sworn, deposes and says that he is of counsel for the defendant; that, in deponent's affidavit, verified September 11, 1934, submitted herein, reference is made to a proof of claim filed on behalf of the complainant U. S. on August 13, 1934, with the Referee in the State Court proceedings, James F. Donnelly, Esq., a typewritten copy of which proof of claim was attached to deponent's said affidavit as Exhibit A.

There is herewith submitted to the Court a true photo-
155 static copy of such proof of claim showing, over the signature of said Referee, the filing thereof.

FREDERICK B. CAMPBELL.

Sworn to before me this 2nd day of October 1934.
[NOTORIAL SEAL]

L. D. BATES,
Notary Public, Kings County.

Clerk's No. 274, Register's No. 6314.
N. Y. Co. Clks. No. 780, Reg. No. 9–B–439.
Queens Co. Clks. No. 421, Reg. No. 2290.
Commission Expires March 30, 1936.

Copy of proof of claim printed hereinbefore as exhibit A attached to affidavit of Frederick B. Campbell, verified September 11, 1934, attached to notice of filing documents with endorsement "rec'd Aug. 13, 1934, by W. Gold at 11:50 a. m., James F. Donnelly, referee."

156 *Document, dated September 24, 1934, attached to notice of filing documents*

DEPARTMENT OF STATE,
Washington, September 24, 1934.

In reply refer to EE.
MESSRS. CAMPBELL AND WHIPP,
20 Exchange Place, New York City.

SIRS: In response to the request contained in your letter of September 18, 1934, there is enclosed a certified copy of the letter addressed to Mr. Boris Bakhmeteff, Ambassador of Russia, by the Secretary of State, the Honorable Charles E. Hughes, on April 29, 1922.

Mr. Boris Bakhmeteff was formally received by the President of the United States as the duly accredited Ambassador Extraordinary and Plenipotentiary of Russia to the United States on July 5, 1917. Mr. Bakhmeteff was recognized as Russian Ambassador until June 30, 1922.

Very truly yours,
For the Secretary of State:

R. WALTON MOORE,
Assistant Secretary.

Enclosure: Certified copy of letter to Mr. Bakhmeteff, April 29, 1922.

157 *Document, dated April 29, 1922, attached to notice of filing documents.*

APRIL 29, 1922.

MY DEAR MR. AMBASSADOR: I have received your letter of April 28, 1922, in which you bring forward the question of your status as Ambassador in the United States and suggest that it may be appropriate to have this terminate in the near future, inasmuch as the liquidation

and final settlement of the business of the Russian Government in the United States for which you were responsible is now practically completed, and as your continuance as Ambassador under the existing circumstances may give rise to misunderstanding.

I believe that a change in the present situation is desirable, and I am glad to be able to concur in your suggestions as to how this may best be brought about.

You will continue to be recognized as Ambassador until June 30 next. After this date the custody of the property of the Russian Government in this country for which you have been responsible will be considered to vest in Mr. Serge Ughet, the Financial Attaché of the Embassy. Mr. Ughet's diplomatic status with this Government will not be altered by the termination of your duties, and he will continue to enjoy the usual diplomatic privileges and immunities.

With assurance of my high esteem and appreciating the
158 friendly spirit in which you have dealt with all matters of interest to this Government, I am, my dear Mr. Bakhmeteff,

Very sincerely yours,

CHARLES E. HUGHES.

701.6111/590.

His Excellency, Mr. BORIS BAKHMETEFF,
Ambassador of Russia.

In United States District Court, Southern District of New York

[Title omitted.]

Answering affidavit of Edward J. Ennis, verified October 4, 1934

STATE OF NEW YORK,
Southern District of New York, ss:

Edward J. Ennis, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in charge of the above-entitled suit.

159 2. I have read the affidavit of Frederick B. Campbell verified October 2, 1934, and the notice that upon the argument herein the defendant will file with the court a photostat copy of a proof of claim filed with the referee in the state court proceeding and the brief of the defendant herein, served October 2, 1934, particularly that part of the brief entitled "As to the Proceedings of the Complainant U. S. in Such State Court Suit" (pp. 32–34), in which it is stated that my affidavit in support of the order to show cause herein makes no mention of a proof of claim filed with the referee in the state court proceeding. The facts concerning the proof of claim and the reason why it was not mentioned in my affidavit in support of the order to show cause are hereinafter stated.

3. On August 9, 1934, I attended a hearing before the referee in the state court proceeding to learn whether or not it was presently

proposed in that proceeding to pay any claims out of any funds in which the U. S. S. R. had an interest prior to November 16, 1933, and which the U. S. S. R. assigned to the United States on that date. I was informed by the referee that he was about to sign and file a report in the state court proceeding recommending distribution of the fund held by the defendant herein to creditors and stockholders of the Moscow Fire Insurance Company.

4. On August 13, 1934, I left at the private law offices of
160 the referee a proof of claim, a copy of which is attached hereto, stating that the United States claimed the entire fund held by the defendant.

5. On August 13, 1934, an appointment with the referee was arranged by telephone for August 14, 1934, for the purpose of discussing any claim that might be made by the United States to the fund held by the defendant. There was no statement or understanding that the appointment on August 14, 1934, would constitute a hearing in the state court proceeding. No notice of such a hearing in the state court proceeding was given to me. The statement in my affidavit verified August 22, 1934, in support of the order to show cause herein that I attended a "hearing" before the referee on August 14 refers to the appointment and meeting hereinafter described.

6. On August 14, 1934, I kept the appointment at the office of the referee in company with Mr. Horan and Mr. Spencer, Assistant United States Attorneys for the Southern District of New York. There were also present several attorneys for various parties to the state court proceeding including Messrs. Campbell and Whipp, attorneys for the plaintiffs in the state court proceeding, Mr. Cabell, attorney for creditors in the state court proceeding and Mr. Fraenkel, attorney for certain stockholders in the state court proceeding. The referee stated that he had invited as many attorneys of parties in the state court proceeding as he could communicate with on short
161 notice, including the attorneys there present, to be present at our discussion of the rights of the United States in the fund held by the defendant. The appointment or discussion was not convened as a hearing in the state court proceeding and it appeared that no record of the discussion was kept. The meeting is not referred to as a hearing in the report of the referee dated August 21, 1934, which states on page 3 thereof (Exhibit B attached to affidavit of John C. Vedder in opposition) the dates upon which hearings were duly held before the referee and mentions August 9, 1934, as the date of the last hearing.

7. During the discussion on August 14, 1934, the referee stated that he would not recognize or consider the proof of claim left at his office on August 13, 1934, and that by the order of the state court appointing him as referee to hear and determine the issues in the state court proceeding he could only consider issues referred to him by the state court and that the United States could assert a claim

in the state court proceeding only by filing an answer or otherwise intervening in the state court proceeding and creating an issue which could be referred to him as referee under the order of his appointment to hear and determine issues created in the state court proceeding. The referee stated that he would not mention or in any way refer to the said proof of claim in the report he was about to make to the state court upon claims properly before him in the state court proceeding.

8. During the discussion on August 14, 1934, the attorneys
162 for the parties in the state court proceeding there present stated that they would not consent or agree to any consideration by the referee of the proof of claim but that they would require the United States to present its claim in the state court proceeding by application to the court.

9. Mr. Horan suggested that the United States might wish to assert an interest in the fund held by the defendant but that he was not presently authorized to state in what forum or in what manner that interest would be asserted.

10. The referee stated that he desired to give the United States a reasonable opportunity to determine whether or not it would assert any claim against the fund.

11. It was agreed and understood by all the parties present at the discussion that the referee would withhold his report which he was about to file for one week and until August 21, 1934, and that in the intervening period the United States would determine in what manner it would assert its rights, whether by intervention in the state court proceeding or by suit in this court.

12. On August 22, 1934, the referee filed his report in the state court proceeding and made no mention whatever of the proof of claim or of the discussion of August 14, 1934.

13. On August 22, 1934, my affidavit in support of the order to show cause herein was verified and no mention was made
163 of the proof of claim in the belief that the referee and all of the parties present at the discussion on August 14, 1934, understood and agreed that the proof of claim had been ignored by the referee and was entirely nugatory and ineffectual and did not constitute an appearance or a pleading in or any part whatsoever of the state court proceeding and was entirely immaterial and irrelevant to a full statement of the facts of the pending state court proceeding.

14. The opposing affidavit of Frederick B. Campbell verified September 11, 1934, to which is annexed a copy of the proof of claim, states at page 6 thereof that at the discussion on August 14, 1934, the referee stated "that he would withhold his decision in said suits for one week to allow time to the United States to take such steps as it should deem advisable with reference to such proof of claim." As stated above the facts are that it was understood that the proof of

claim was considered by the referee and counsel present to be entirely ineffectual and that it would not be considered by the referee in any event.

EDWARD J. ENNIS.

Sworn to before me this 4th day of October, 1934.

JOHN V. B. MERRITT,
Notary Public, Westchester County.

Cert. filed in N. Y. Co. Clk's No. 637.
Commission expires March 30, 1935.

164 *Exhibit A—Copy of proof of claim attached to answering affidavit of Edward J. Ennis, verified October 4, 1934*

(Printed hereinbefore as Exhibit A attached to affidavit of Frederick B. Campbell, verified September 11, 1934.)

In United States District Court, Southern District of New York.

E. 78–377

UNITED STATES OF AMERICA, COMPLAINANT

against

BANK OF NEW YORK AND TRUST COMPANY, DEFENDANT

E. 78–383

UNITED STATES OF AMERICA, COMPLAINANT

against

PRESIDENT AND DIRECTORS OF THE MANHATTAN COMPANY, SUCCESSOR to The Bank of Manhattan Trust Company, defendant

Appearances: Martin Conboy, U. S. Attorney, Solicitor for the Plaintiff in both cases (Martin Conboy, Francis H. Horan, Edward J. Ennis and Paul A. Sweeney, Esqs., of Counsel).

165 Messrs. Emmet, Marvin & Martin, solicitors for defendant Bank of New York and Trust Company (Frederick B. Campbell, Paul C. Whipp, and Lounsbury D. Bates, Esqs., of counsel).

Messrs. Rumsey & Barker, solicitors for defendant president and directors of the Manhattan Company (Wendell P. Barker, Robert J. Sykes, and W. C. Morris, Esqs., of counsel).

Messrs. Charles B. Alling, Hartwell Cabell, Coudert Brothers, John M. Downes, Engelhard, Pollak, Pitcher, Stern & Clarke, Borris M. Komar, Rosenberg, Goldmark & Colin and Samson Selig, representing various interests, filed briefs amici curiae in opposition to the motions of the Government and in support of the motions of the defendants to dismiss.

Opinion

Filed Nov. 30, 1934

COXE, *D. J.*› In these suits the United States seeks to establish title to the remaining New York assets of Moscow Fire Insurance Company and Northern Insurance Company, two Russian insurance corporations which were dissolved in 1918 by decrees of the Soviet Government. These Companies formerly maintained branches in this country, and upwards of eight years ago the New York assets of both companies were taken over by the New York Superintendent of Insurance in liquidation proceedings under the New York Statute.

The Superintendent's liquidation was completed prior to 1933, and in that year the remaining assets of the Moscow Com-
166 pany were turned over, under a State court order, to the defendant Bank of New York and Trust Company "as agent or depositary" of the Moscow Company, subject to withdrawal only on the "order of a Court of competent jurisdiction." The same disposition was made of the remaining assets of the Northern Company, except that the depositary in that case was the Bank of Manhattan Trust Company, predecessor of the defendant President and Directors of the Manhattan Company.

The Northern Company had previously made an assignment for the benefit of creditors to the defendant President and Directors of the Manhattan Company, under the New York statute, and, by a later order of the State court, the transfer of the assets of the Northern Company to that Company, as assignee, was authorized and approved.

The funds of the two companies are now held by the defendant Banks, awaiting distribution among the persons entitled to share in the funds, respectively.

Recently proceedings were started in the State courts, on notice to all parties interested, to secure distribution of the two funds, and these proceedings have proceeded in the case of the Moscow Company to judgment, and, in the case of the Northern Company, to a consideration of the claims presented.

The complaints in the two suits are substantially alike, and allege that the funds of the two companies, now held by the defendant Banks, were "confiscated and appropriated" by the "Russian
167 State" in 1918, and that title to both funds was assigned to the United States by the "Russian State" on November 16, 1933. The prayer for relief in each case is for an accounting and a direction to turn over the fund to the United States.

The present motions are by the Government in each case for an injunction pendente lite, restraining distribution of the fund; and by the defendant in each case for a dismissal of the complaint for insufficiency.

The principal contentions urged by the defendants in support of the motions to dismiss are (1) that our courts will not enforce the Soviet decrees of confiscation over property located here, and which has always been located here; and (2) that no title or interest in or to the funds of the two Companies now held by the defendant Banks has been or could be assigned or transferred to the United States by the Soviet Government.

The legislation of any nation has no extraterritorial force as a matter of right. Rose v. Himely, 4 Cranch, 241; The Apollon, 9 Wheat., 362; Hilton v. Guyot, 159 U. S. 113; Second Russian Ins. Co. v. Miller, 297 Fed. 404, affd. 268 U. S. 552. The extent to which such legislation will be recognized by other nations depends on comity. The Bank of Augusta v. Earle, 13 Peters, 519, 589; Second Russian Ins. Co. v. Miller (supra). Comity is "the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws." Hilton v. Guyot, 159 U. S. 113, 164.

168 The courts of this country will not, however, enforce the laws of foreign nations which are contrary to our own public policy: The Bank of Augusta v. Earle (supra); Russian Reinsurance Co. v. Stoddard, 240 N. Y. 149; Vladikavkazsky Ry. Co. v. N. Y. Trust, 263 N. Y. 369; and the public policy of the United States is to be determined "from the Constitution and the laws, and the course of administration and decision"; License Tax Cases, 5 Wall 462, 469; "not by the varying opinions of laymen, lawyers, or judges as to the demands of the interests of the public." Hartford Fire Ins. Co. v. Chicago, 70 Fed. 201, 202.

The confiscatory decrees of the Soviet Government were clearly opposed to the public policy of the United States. Russian Volunteer Fleet v. U. S., 282 U. S. 481, 491, 492; Petrogradsky M. K. Bank Co. v. National City Bank, 253 N. Y. 23; Vladikavkazsky Ry. Co. v. N. Y. Trust, 263 N. Y. 369; Baglin v. Cusenier, 221 U. S. 580. They were utterly ineffective to reach the properties of the Moscow and Northern Companies in this country; Vladikavkazsky Ry. Co. v. N. Y. Trust (supra); Baglin v. Cusenier (supra); The Jupiter, 96 L. I. P. 62 (1927); Employees Liability v. Sedgwick, 1927, A. C. 95; and the subsequent recognition of the Soviet Government in no way changed the confiscatory nature of the decrees insofar as these particular funds were concerned. Lehigh Valley v. State of Russia, 21 Fed. (2) 396, 401; Vladikavkazsky Ry Co. v. N. Y. Trust (supra).

It is insisted on behalf of the United States that the Soviet Government became the "liquidator" of the assets of the two dis-
169 solved Russian insurance companies, and that a liquidator's title will be accorded recognition in our courts. The difficulty with this contention is that the complaints allege specifically that

the properties of the two companies were "confiscated and appropriated" by the Soviet Government. However, it is perfectly clear that the liquidation of a corporation implies winding up and distribution of the assets among the creditors and stockholders: Lafayette Trust Co. v. Beggs, 213 N. Y. 280, 283; Matter of Silkman, 121 A. D. 202; and it is nowhere suggested that the two funds in question were assigned to the United States for any such limited purpose as counsel intimates.

I am satisfied, also, that no assignment or transfer of the two funds was ever made to the United States by the Soviet Government. The instrument relied on to support the alleged assignment is the letter of Mr. Litvinoff, People's Commissar for Foreign Affairs of the Union of Soviet Socialist Republics, to the President of the United States, dated Nov. 16, 1933; reading as follows:

"MY DEAR MR. PRESIDENT: Following our conversations I have the honor to inform you that the Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counter claims between the Government of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals, the Government of the Union
of Soviet Socialist Republics will not take any steps to en-
170 force any decisions of courts or initiate any new litigations for
the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment."

"The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above, not to make any claim with respect to—

"(a) judgments rendered or that may be rendered by American courts insofar as they relate to property, or rights, or interests therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or,

"(b) acts done or settlements made by or with the Government of
the United States, or public officials in the United States, or
171 its nationals, relating to property, credits, or obligations of
any Government of Russia or nationals thereof."

"I am, my dear Mr. President,

"Very sincerely yours,

"MAXIM LITVINOFF,
"*People's Commisar for Foreign Affairs,*
"*Union of Soviet Socialist Republics.*

"MR. FRANKLIN D. ROOSEVELT,
"*President of the United States of America,*
"*The White House.*"

Under the express terms of this letter, the assignment to the United States was of "the amounts admitted to be due or that may be found due it (i. e., the Soviet Government), as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, * * *."

The funds held by the defendant Banks for the Moscow and Northern Companies were in no sense due the Soviet Government from "American Nationals." They belonged to the two dissolved insurance companies, which were given juristic standing in the New York courts by repeated decisions of the Court of Appeals. Petrogradsky M. K. Bank v. National City Bank, 253 N. Y. 23; Matter of People (Russian Reinsurance Co.), 255 N. Y. 415; Matter of People (Northern Ins. Co.), 255 N. Y. 433. Moreover, the defendant Banks were merely custodians of the respective funds, pursuant to orders of the State courts; and now the defendant Bank of New York and Trust Company holds the fund of the Mos-
172 cow Company only "as agent or depositary" of that company; and in the case of the Northern Company the defendant President and Directors of the Manhattan Company is acting as assignee for the benefit of creditors under the New York statute. With respect to neither fund is there any relation of debtor and creditor insofar as the defendant Banks are concerned. The letter plainly refers only to such funds as were involved in State of Russia v. National City Bank, 69 Fed. (2d) 44, where an American bank was the debtor of the Russian Government for the latter's funds held on deposit; it has no application whatever to the present funds now in the hands of the defendant Banks merely as custodians. This is particularly emphasized by the inclusion in the letter of the claim of the Russian Volunteer Fleet, which was before the Supreme Court in Russian Volunteer Fleet v. U. S., 282 U. S. 481, for if it had been intended to transfer to the United States claims against dissolved Russian insurance companies for the recovery of New York assets, concerning which there had at the time been extensive litigation in the New York courts, it is at least reasonable to suppose that specific reference would have been made to them.

The suggestion of the Government that the Litvinoff assignment is not open to judicial construction requires little comment, for clearly where private rights are concerned, the mere assertion of the Government that suit should be commenced does not preclude the Courts from determining as a judicial matter the true meaning of the instrument involved. There is nothing in State of
173 Russia v. National City Bank, 69 Fed. (2) 44, holding to the contrary; and the statement on page 48 of the opinion

that "Our courts must accept the assertion of the government of the United States as to the effect of an assignment", when applied to the particular facts of that case, mean nothing more than that the authority of Mr. Litvinoff to make the assignment, and the right of the United States to accept it, will not be questioned by our courts. The word "effect" as used in this excerpt from the opinion, was not intended to preclude judicial interpretation of the language of the instrument itself.

I hold, therefore, that the two funds in the hands of the defendant Banks were not in any way affected by the Soviet decrees of confiscation, and that the United States has not acquired title to either fund; and with this disposition of the principal issues in the two cases, it seems unnecessary to consider the other points raised by counsel.

The motion of the defendant in each case to dismiss the complaint for insufficienty is granted; and the motions of the United States for injunctions pendente lite are denied.

Dated, November 28, 1934.

ALFRED C. COXE,
United States District Judge.

Filed, November 30, 1934.

174 In United States District Court, Southern New York

Present: Hon. Alfred C. Coxe, United States District Judge.

In Equity, No. 78–377

UNITED STATES OF AMERICA, COMPLAINANT

against

BANK OF NEW YORK AND TRUST COMPANY, DEFENDANT

Order and decree

December 19, 1934

The complainant, on August 22, 1934, having filed its bill of complaint herein, verified August 22, 1934; and complainant thereafter, by orders of this court, having filed and served certain bills of particulars of said complaint dated September 13, 1934, and October 1, 1934, respectively;

And complainant having moved by order to show cause dated August 22, 1934, upon the aforesaid bill of complaint and upon the affidavit of Edward J. Ennis verified August 22, 1934, and the papers thereto attached, for an injunction pendente lite restraining the defendant from distributing any part of the funds alleged in the

175 bill of complaint to be in the possession of the defendant; and complainant in further support of its motion for an in-

junction pendente lite having filed and served an affidavit of Valerian E. Greaves verified September 24, 1934, and the further affidavit of Edward J. Ennis verified October 4, 1934; and defendant in opposition to complainant's motion for an injunction pendente lite having filed with the court the following enumerated documents, namely: affidavit of John C. Vedder verified September 12, 1934, and Exhibits 1 to 5 inclusive thereto attached; the affidavit of Frederick B. Campbell verified September 11, 1934, and Exhibits A, B, and C thereto attached; the further affidavit of Frederick B. Campbell verified October 2, 1934, and the photostat of the proof of claim therein referred to; and letter from the Secretary of State of the United States dated September 24, 1934, and copy of letter therein referred to;

And the defendant by notice of motion dated August 29, 1934, having moved for an order dismissing the bill of complaint on the ground that said complaint fails to state facts sufficient to constitute a cause of action;

And the cause having come on to be heard;

NOW, upon reading the papers filed herein as above recited, and after hearing Martin Conboy, Esq., United States District Attorney for the Southern District of New York, on behalf of the complainant United States of America, in support of the bill of complaint and of the motion for an injunction pendente lite; and Frederick
176 B. Campbell, Esq., on behalf of defendant in support of motion to dismiss the bill of complaint and in opposition to complainant's motion for an injunction pendente lite; and due deliberation having been had; and the Court, on November 30, 1934, having rendered and filed its opinion, dated November 28, 1934;

And upon motion of Emmet, Marvin & Martin, Solicitors for the defendant; it is

Ordered, adjudged, and decreed that the defendant's motion to dismiss the bill of complaint for insufficiency be and hereby is granted, and the motion of the complainant for an injunction pendente lite be and hereby is denied; and that the bill of complaint be and hereby is dismissed.

And, complainant having applied for a suspension, pending appeal of the order and decree, and defendant having consented to such suspension upon the terms hereinafter specified; it is further

Ordered that the operation of this order and decree be and is hereby suspended until the coming down and the filing in this court of the mandate of the U. S. Circuit Court of Appeals upon an appeal by complainant to such court, upon the conditions hereinafter specified, namely:

(a) that the petition and allowance of appeal, the assignment of errors and the citation, be filed and served within two (2) days from the date hereof;

(b) that the printed transcript of the record shall be made, filed, and served by the complainant within ten (10) days from the date hereof;

177 (c) that complainant will apply to the U. S. Circuit Court of Appeals for the hearing of such appeal upon a date as near the commencement of the January 1935 Term (January 7, 1935) of said court as may be possible; and

(d) that complainant's brief on appeal will be served upon defendant's solicitors ten days prior to the date so set for argument of such appeal.

Filed, Dec. 20, 1934.

ALFRED C. COXE,
U. S. D. J.

In United States District Court, Southern District of New York

[Title omitted.]

Petition and allowance of appeal

The complainant, United States of America, by Martin Conboy, United States Attorney for the Southern District of New York, considering itself aggrieved by the order and decree in the
178 above-entitled cause, dated December 19, 1934, and filed December 20, 1934, does hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Second Circuit for the reasons specified in the Assignment of Errors filed herewith and prays that this appeal be allowed, that a citation be issued, directed to the above-named defendant commanding it to appear before the United States Circuit Court of Appeals for the Second Circuit to do and receive what may be just in the premises, and that a transcript of the record, proceedings and papers upon which the said decree and order were made, duly authenticated, be sent to thte United States Circuit Court of Appeals for the Second Circuit.

MARTIN CONBOY,
United States Attorney for the
Southern District of New York,
Solicitor for Complainant.

Office & P. O. Address, U. S. Courts & P. O. Bldg., Borough of Manhattan, New York City.

Ordered that the appeal prayed for by the complainant, United States of America, be and hereby is allowed.

Dated, New York, N. Y., December 22, 1934.

ALFRED C. COXE, *U. S. D. J.*

179 In United States District Court, Southern District of New York

[Title omitted.]

Assignment of errors

Now comes the complainant, United States of America, and files the following assignment of errors upon which it will rely on its appeal from the order and decree in the above-entitled cause dated December 19, 1934, and filed December 20, 1934:

1. The Court erred in granting the motion of the defendant to dismiss the bill of complaint for failure to state facts sufficient to constitute a cause of action.

2. The Court erred in granting the motion of the defendant to dismiss the bill of complaint for insufficiency.

3. The Court erred in denying the motion of the complainant for an injunction pendente lite.

4. The Court erred in holding that the assignment from the
180 Union of Soviet Socialist Republics to the complainant, dated November 16, 1933, did not transfer to the complainant all of the right, title, and interest of the Moscow Fire Insurance Company and all the right, title, and interest of all of its stockholders, in all of the property of the Moscow Fire Insurance Company in the United States, including the cash, securities, and other assets held by the defendant.

5. The Court erred in holding that the decrees of the Russian State nationalizing the Moscow Fire Insurance Company and appropriating all of its property in the United States, including the cash, securities, and other assets held by the defendant, are opposed to the public policy of the United States.

6. The Court erred in holding that the decrees of the Russian State nationalizing the Moscow Fire Insurance Company were ineffectual to reach the properties of the Moscow Fire Insurance Company in the United States.

7. The Court erred in holding that recognition of the Soviet Government by the United States did not change the confiscatory nature of the decrees of the Russian State nationalizing the Moscow Fire Insurance Company and appropriating all of its property in the United States, including the cash, securities, and other assets held by the defendant.

8. The Court erred in holding that the decrees of the Russian
181 State did not appropriate and transfer to the Russian State all of the right, title, and interest of the Moscow Fire Insurance Company and all of the right, title, and interest of all of its stockholders in all of the property of the Moscow Fire Insurance Company in the United States, including the cash, securities, and other assets held by the defendant.

9. The Court erred in holding that by the decrees of the Russian State the said Russian State did not become the liquidator of all of the assets of the Moscow Fire Insurance Company, including the cash, securities, and other assets held by the defendant.

Wherefore, complainant prays that the said order and decree, dated December 19, 1934, and filed on the 20th day of December 1934, be reversed and that the said Court may be directed to grant the complainant's motion for an injunction pendente lite as prayed for in the bill of complaint.

Dated, New York, N. Y., December 22, 1934.

MARTIN CONBOY,
United States Attorney for the
Southern District of New York,
Solicitor for Complainant.

Office & P. O. Address, U. S. Courts & P. O. Bldg., Borough of Manhattan, New York City.

182 [Citation in usual form omitted in printing.]

183 In United States District Court, Southern District of New York

[Title omitted.]

Stipulation as to record

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated January 15th, 1935.

MARTIN CONBOY,
U. S. Attorney,
Attorney for Complainant-Appellant.
EMMET, MARVIN & MARTIN,
Attorneys for Defendant-Appellee.

184 [Clerk's certificate to foregoing transcript omitted in printing.]

Penn General Casualty Co. v. *Penn ex rel. Schnader*, — U. S. — (Dec., Feb. 4, 1935). If the final decision is contrary to applicable Federal law, it may be reviewed by the Supreme Court. *Stanley* v. *Schwalby*, 162 U. S. 255, 278; *Spokane County* v. *United States*, 279 U. S. 80; *People's Trust Co.* v. *United States*, *supra;* 28 U. S. C. A. sec. 344 (b).

The motion for an injunction pendente lite had for its object a stay of proceedings in a State court which were within the jurisdiction of that court. No such injunction was authorized by any law relating to proceedings in bankruptcy; was not necessary to protect jurisdiction possessed by any Federal court; and was properly denied. 28 U. S. C. A. sec. 379. Decree affirmed.

Manton, C. J., dissents with opinion.

United States Circuit Court of Appeals for the Second Circuit

UNITED STATES OF AMERICA, COMPLAINANT-APPELLANT

against

BANK OF NEW YORK AND TRUST COMPANY, DEFENDANT-APPELLEE

UNITED STATES OF AMERICA, COMPLAINANT-APPELLANT

against

PRESIDENT AND DIRECTORS OF THE MANHATTAN COMPANY, SUCCESSOR to the Bank of Manhattan Trust Company, defendant-appellee

UNITED STATES OF AMERICA, COMPLAINANT-APPELLANT

against

GEORGE S. VAN SCHAICK, SUPERINTENDENT OF INSURANCE OF THE State of New York, Liquidator of the Domesticated United States Branch of the First Russian Insurance Company, Established in 1817, defendant-appellee

MANTON, Circuit Judge dissenting.

The complaints in these actions ask for accountings seeking to recover balances held by Russian insurance corporations, Moscow Fire Insurance Company of Moscow, Russia; the First Russian Insurance Company, and Northern Insurance Company of Moscow, Russia, held by the respective banks, appellees, as depositories. Each insurance company had its principal offices in Russia.

In *Bank of New York and Trust Company case*, the complaint alleges that in 1917 and 1920 decrees of the Russian State dissolved the Moscow Fire Insurance Company, that all of its right, title, and interest and all the right, title, and interest of the stockholders in its property, including deposits made with the Superintendent of Insurance of the State of New York, was confiscated and appropriated by the Russian State. It alleges that, on April 18, 1933, the claims of domestic creditors to the fund deposited with the Superintendent of Insurance of New York had been satisfied and that he,

pursuant to an order of the Supreme Court of New York, directed that the fund be released and paid, and the balance transferred and delivered to the agent or depository of the Moscow Insurance Company, not to be withdrawn except upon an order of a court of competent jurisdiction; that the appellee received and had cash securities amounting to $1,180,310.54. It set forth an assignment on November 16, 1933, by the Russian State to the appellant for valuable consideration, of all the right, title, and interest in and to the cash and securities constituting the balance of the deposit and also that the appellant by assignment had all the right, title, and interest of all Russian nationals in and to this cash and securities, and that it was the sole and exclusive owner entitled to immediate possession. It alleges a demand of and refusal by appellee to deliver this property to appellant and the wrongful withholding thereof.

In the *Van Schaick case*, the complaint pleaded that the First Russian Insurance Company had been dissolved by decree of the Russian State and its property, including its deposit with the Superintendent of Insurance of New York had been confiscated and appropriated by the Russian State. It alleges that on August 8, 1925, by order of the New York State Supreme Court, the Superintendent of Insurance took possession of the property of the domestic United States branch of that insurance company (established 1907) under section 63 of the insurance law of the State. That all domestic claims had been adjudicated and allowed, leaving undisposed of certain foreign claims which arose in the conduct of the business outside of the United States; that two claimants residing in the city of New York had been allowed $128,010.58 and $38,403.17 each respectively by an order of the State supreme court on February 26, 1934. That on appeal to the appellate division of the supreme court of the State, this award was affirmed (June 15, 1934), but that an appeal was taken to the Court of Appeals of the State of New York and is undisposed of. An assignment of the balance of $1,170,783.36, as of November 16, 1933, is pleaded.

In the case of president and directors of the Manhattan Company, it is pleaded that the Northern Insurance Company of Moscow is a Russian corporation with a branch in New York, and that it made a deposit with the Superintendent of Insurance of New York to comply with the requirements of the insurance law. That it too had been dissolved back in 1917 and 1918, and its property confiscated by the Russian State. That the superintendent of insurance took possession August 3, 1933; the claims of domestic creditors as to this fund, deposited with the superintendent of insurance, were satisfied pursuant to an order of the State Supreme court and directed that the funds be released, paid, and transferred to the agent or depository of the Northern Insurance Company of Moscow, said funds to be withdrawn upon order of a court of competent jurisdiction. The amount here involved was $332,994.15 held by the appellee. It is alleged that this too was assigned on November 16, 1933. Demands

were made for the payment of these moneys pursuant to this assignment and refused.

In each case a restraining order against disposition pending the trial of a suit was denied and on motion supported by affidavits, each of the complaints was dismissed.

The United States claims title to these balances and asks for an accounting by virtue of two assignments executed by agents of the Russian Government—the Ughet and Litvinov assignments, the first executed prior to and the second since recognition. The questions presented are: (1) Does the claim of the Government to the balance named in the hands of the appellees come within the terms of the so-called "Litvinov assignment"; and (2) assuming it does, what is the effect of a political recognition of the Union of Soviet Socialist Republics, and should such recognition be retroactive and extraterritorial in its effect?

As to the first question: On the 16th of November 1933, Litvinov, the People's Commisar for Foreign Affairs of the Soviet Union, executed in his official capacity, an assignment which was a part of the general scheme of recognition of the Soviet Union by the terms of which it assigned to the Government of the United States, "the amounts admitted to be due or that may be found to be due it (the Soviet Government), as the successor of prior governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, * * *."

Questions as to this assignment must be resolved according to the maxims and principles of the Law of Nations (*Henfield's Case*, 11 Fed. Cas. p. 1089, 1101), which require that a formal engagement between two nations—whether such engagement be in the form of a treaty or of an executive agreement—should be construed as liberally and untechnically as the exigencies of the case may demand in order to effectually carry out the evident or probable design of the parties in executing it. *Ware* v. *Hilton*, 3 Dall. 299; *The Amiable Isabella*, 6 Wheat. 71; *United States* v. *Arredondo*, 6 Pet. 691; *Geofroy* v. *Riggs*, 133 U. S. 267; *Wright* v. *Henkel*, 190 U. S. 40; *Rocca* v. *Thompson*, 223 U. S. 317.

"Such solemn international instruments between independent sovereignties as public treaties, intended primarily for the common advancement of their individual interests, the interests of civilization, and the promotion of international amity, are not to be read as rigidly as documents between private persons governed by a system of technical law, but, so far as it can be done without the sacrifice of individual rights or those principles of personal liberty which lie at the foundation of our jurisprudence, should be construed in the light of that larger reason, that broader, fairer, and more liberal sense calculated to perpetuate that international concord which constitutes the spirit of the law of nations." (Puente, International Law, p. 228.)

The ultimate design of the two countries in executing this assignment was to transfer "the claims and counterclaims between the

Governments of the Union of Soviet Socialist Republics and the United States of America, and the claims of their nationals", to the broad plane of diplomacy, and by placing those claims beyond the reach of vexatious judicial action, to facilitate at one stroke, the adjustment of the delicate points at issue between the two countries. No narrow or strained construction of that instrument is permissible under these circumstances. The funds at issue are admitted to be the balances of the assets of Russian corporations with branch offices here affected by the Soviet decrees whose local business was liquidated by the courts of the State of New York. *Matter of Moscow Fire Ins. Co.*, 255 N. Y. 433. If it be sound, as the appellant contends, that the effect of the Soviet decrees is to vest in the Soviet Government complete title to those funds, and to give that Government a cause of action to recover them, then, on that hypothesis, we would be bound to hold that the funds in the safe keeping of appellee—an "American national"— are such as "may be found to be due" the Soviet Government within the terms of the assignment; that is, which "ought to be paid" by appellee, or which "may be demanded" by the assignor. 1 Bouvier, Law Dictionary, 3rd Ed. by Rawle, 946; *Ransom* v. *Bidwell*, 89 Conn. 137. The fact that by the terms of the assignment the Soviet Government has renounced its right to sue American nationals who may be indebted to it, is a circumstance strongly urging upon us the broadest possible interpretation of the terms of the assignment. If, however, the effect of the Soviet decree is not such as to vest title to the funds in the Soviet Government, then there would be no question that the funds would not fall within the terms of the assignment and the claims of the appellant must fail. Whether or not the funds here involved are included in the terms of the assignment depend upon the juristic effect of the political act of recognition, and on the degree of extra-territorial force which international comity—the *comitas gentium*—ordains that we should give to Soviet legislation of this character.

The conduct of the international relations of the nation is a matter of state (*The Regdai*, 278 Fed. 294) which the Constitution has properly placed in the hands of the executive and legislative—that is, the "political", departments of the national Government, and the propriety of whatever may be done in the exercise of this political power not subject to judicial review or inquiry. *Oetjen* v. *Central Leather Co.*, 246 U. S. 297, 302; *Terrazas* v. *Donohue*, 227 S. W. 206 (Court of Civil Appeals, Tex.). No doctrine of public law is more firmly established than this: That it belongs exclusively to the department constitutionally in charge of the external affairs of the nation to recognize or decline to recognize a new government in an old state or a new state carved out of an old one (*Rome* v. *Himely*, 4 Cranch. 272; *Gelston* v. *Hoyt*, 3 Wheat. 246; *Kennett* v. *Chambers*, 14 How. 38; *Selnicki* v. *Phila. Natl. Bank*, 273 Pa. 110) and to determine, in case of recognition, who is the *de jure* or *de facto* sovereign in such country. *Jones* v. *United States*, 137 U. S. 202; *Oetjen* v. *Central Leather Co.*, 246 U. S. 297; *Agency of Cana-*

dian Car & Foundry Co. v. *American Car Agency*, 258 Fed. 363 (C. C. A. 2). That determination, when made by the political department of the Government, concludes our courts on the legal status of such sovereign or government. *Ricaud* v. *Amer. Metal Co.*, 246 U. S. 304; *Jones* v. *U. S.*, 137 U. S. 202, 212; *Republic of Peru* v. *Peruvian Guano Co.*, 36 Ch. Div. (1887) 489.

Recognition is adequately defined as the act by which a State, which is already a member of the community of nations, signifies that it accepts another State as a juristic person of international law, with all the rights and obligations which the law establishes. *A. M. Luther* v. *James Sagor & Co.*, (1921) 3 K. B. Div. 549. While recognition is not necessary to enable a state to maintain its internal sovereignty (*McIlvaine* v. *Coxe's Lessee*, 4 Cranch. 209, 212; *Wulfsohn* v. *Russian S. F. S. Republics*, 234 N. Y. 372; *Salimoff & Co.* v. *Standard Oil Co.*, 262 N. Y. 220, 226 227; Wheaton's International Law, Lawrence's Ed. p. 36), the authorities are nevertheless in accord that it is ordinarily indispensable to make the State's external sovereignty effective, or, to express it differently, to enable the State to become a juristic person of international law. *United States* v. *Hutchings*, 2 Wheeler Cr. Cas. 543, Fed. Cas. No. 15429; Holland, Lectures on International Law, Walker's Ed., 1933, p. 91; 1 Oppenheim, International Law, 4th ed. 1928, § 71 p. 143; 1 Louter, Le Droit International Public Positif [1920], p. 218; Visscher, Les Gouvernements etrangers en Justice, Revue de Droit International, Ser. III [1922], v. 3, p. 149; Ullmann, Trattato di Diritto Internazionale Pubblico, tr. by Buzzati, 1914, § 30, p. 184. Recognition clothes a *de facto* state with an international status (*Salimoff & Co.* v. *Standard Oil Co.*, 282 N. Y. 220, 227) and confirms the self-existence of such State (Zeffter, Le Droit International de l'Europe, Bergson's trans. [1883] p. 61). It implies a formal engagement to respect the rights and powers of sovereignty in the new State and to accept its form of government as adequate to express its rational and normal will.

"In recognizing the State, we consequently recognize its legislative capacity; we accept its legislation, both statutory and consuetudinary, as defining the laws of its national existence sufficiently for international purposes." (1 Lorimer, The Institutes of the Law of Nations [1883] 325.)

Recognition, moreover, clothes the State recognized with international capacity to enter into diplomatic relations and to conclude treaties (1 Oppenheim, op. cit., § 75*d*, p. 15), and accepts the validity and efficacy of the acts of the recognized State—be those acts executive, legislative, or judicial—and it impresses upon them a retroactive effect from the commencement of the existence of such State or Government. Thus, the Supreme Court has said in *Oetjen* v. *Central Leather Co.* (246 U. S. 297, 303), that "recognition is retroactive in effect and validates all the actions and conduct of the government so recognized from the commencement of its ex-

istence." In *Underhill* v. *Hernandez* (168 U. S. 250, 253), the Court said:

"If the party seeking to dislodge the existing government succeeds, and the independence of the government it has set up is recognized, then the acts of such government from the commencement of its existence are regarded as those of an independent nation."

The same principle has been accepted by tribunals of respectable authority in other countries. In England, the House of Lords in *Lazard Bros. & Co.* v. *Midland Bank, Ltd.*, [1933] A. C. 289, decided that—

"The effect of such recognition is retroactive and dated back to the original establishment of Soviet rule which was in the 1917 October revolution, as was held by the Court of Appeal in *Aksionairnoye Obschestve A. M. Luther* v. *James Sagor & Co.*"

In France, the Civil Tribunal of the Department of the Seine in De Mayenne e, Jeutel, 55 Clunet, 710 [1926] held that "the effect of the *de jure* recognition of the Union of the Soviet Socialist Republics, except as it attempts to take away vested rights, is retroactive and goes back to the day of the commencement of the juridical existence of the new government."

Protected by the retroactive effect of recognition are also legislative (*Murray* v. *Vanderbilt*, 39 Barb. 140, 146) and executive (*Oetjen* v. *Central Leather Co.*, 246 U. S. 297; *Monte Blance Real Estate Corp.* v. *Wolvin Line*, 145 La. 563, 85 So. 242) acts of confiscation.

We must take judicial notice of the recognition of the Soviet Government by our Government on November 16, 1933 (*Jones* v. *United States*, 137 U. S. 202; *Underhill* v. *Hernandez*, 168 U. S. 250; *Oetjen* v. *Central Leather Co.*, 246 U. S. 297; *Ricaud* v. *Amer. Metal Co.*, 246 U. S. 304; *City of Berne* v. *Bank of England*, 9 Ves. 347, 32 Repr. 636; *Mighell* v. *Sultan of Jehore* [1894] 1 Q. B. Div. 149, 158, 161, A. C.; *Duff. Development Co.* v. *Govt. of Kelantan*, [1924] A. C. 797, H. of Lords), and applying the foregoing principles to the state of facts before us, we are bound by the determination of our political department regarding the international legal status of the Soviet Government; that recognition having been accorded, we must accept the Soviet Government as a legitimate governmental authority in Russia, and its institutions and laws as adequate expressions of the national will to meet the requirements of international law; that the effect of the recognition of that Government is to retroact upon and validate for international purposes, all the acts, whether legislative, executive, or judicial, of that Government, including the decrees by which the property and assets of the respective insurance companies were affected from October 1917, when that Government came into power.

But, as each nation can legislate only for itself (*The Antelope*, 10 Wheat. 66, 122), to hold, as we must, that the recognition of the Soviet Government is retroactive and that its actions are validated, in our judgment, does not answer the question on which these cases necessarily revolve, namely, whether the legislation of the Soviet

Government, as it affects these insurance companies, should be recognized and applied by our courts so as to vest in the Soviet Government title to the assets of the corporations located here and thus enable that Government to assign such title to the United States as it purports to do. That question is not free from intrinsic difficulties, and the studied views of those who have considered and written on the subject, and the *obiter dicta* of the courts as they have had occasion to comment on it, are far from being in agreement. Realizing that for the first time, perhaps, in the judicial history of this country the courts have been called upon by a foreign power, with whom we are now in relations of amity, to give extraterritorial effect with respect to property located here, to its admittedly confiscatory legislation, requires that we approach the subject with caution. That the legislation of each State is local in character and has no force *proprio vigore*, beyond its jurisdiction, is a principle flowing from and in entire harmony with the dominant conceptions of political science in every land. In the case of *The Apollon* (8 Wheat. 362, 370) [1824], Mr. Justice Story said:

"The laws of no nation can justly extend beyond its own territory, except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation, within its own jurisdiction. And, however general and comprehensive the phrases used in our municipal laws may be, they must always be restricted in construction, to places and persons upon whom the legislature have authority and jurisdiction."

This general principle has been followed down to the present time without any material variation. *Canada Southern R. Co.* v. *Gebhard*, 109 U. S. 527, 536; *Huntington* v. *Attrill*, 146 U. S. 659, 689; *Hilton* v. *Guyot*, 159 U. S. 113, 163; *Second Russian Ins. Co.* v. *Miller*, 297 Fed. 404 (C. C. A. 2). It is also accepted in the English courts (*Sedgwick Collins & Co.* v. *Russian Ins. Co.* [1925] 1 K. B. Div. 1, 15). The principle is given even a more rigorous application with respect to foreign laws or judgments which are contrary to morals, to public policy or prejudicial to local interest (*Bank of Augusta* v. *Earle*, 13 Pet. 519, 589; *Vladikavkazsky Ry Co. v. N. Y. Trust Co.*, 263 N. Y. 369, 378), or are of a penal character (*Baglin* v. *Cusenier*, 221 U. S. 580; *Huntington* v. *Attrill*, 146 U. S. 657, 667; Wharton, A Treatise on the Conflict of Laws, 2d Ed. [1881] § 4).

But, within the sphere of sovereignty enacting it, that legislation is effective to regulate fully the status of all persons and things therein, and to determine the juristic effect of every act or relationship done or established under it. To the full force of this principle, the respective insurance companies had to yield their unqualified assent. They came into being under the laws of an imperial sovereign; they lived many years under the imperium of those laws; and in 1918 a new sovereign power, the legitimacy of which has been explicitly accepted by our Government, cut short their lives; it took over their corpus—their properties and assets. Such was the fate of these cor-

porations in territories subject to Russian jurisdiction. As to the fate of the branches of these corporations here, the problem is not simple, for there the acts of the Russian Government may clash with local conceptions of private international law or policy.

That the continuity and conditions of juristic personality depend on the pleasure of the legislator who creates it, may safely be admitted. 9 Holdsworth, A History of English Law [1926], p. 48.

In *Canada Southern R. Co.* v. *Gebhard* (109 U. S. 527, 537), the Supreme Court said:

"Whatever disabilities are placed upon the corporation at home it retains abroad, and whatever legislative control it is subjected to at home must be recognized and submitted to by those who deal with it elsewhere. A corporation of one country may be excluded from business in another country (*Paul* v. *Virginia*, 8 Wall. 168), but, if admitted, it must, in the absence of legislation equivalent to make it a corporation of the latter country, be taken, both by the Government and those who deal with it, as a creature of the law of its own country, and subject to all the legislative control and direction that may be properly exercised over it at the place of its creation."

And there is no reason why the suppression of a juristic person by the legislative act of a sovereign which created it, should be regarded by the courts of other countries as contrary to their public policy. The fortune that betakes a corporation under the law which created and controlled it, betakes in like measure the branch offices both at home and abroad. The reason for this is that a branch office is nothing more, in the eyes of the law, than a prolongation of the life of the foreign corporation, without independent juristic existence of its own. This is the posture taken on repeated occasions with regard to the branch offices of these extinct Russian corporations, by the courts of Poland (Affaire de Julien Muszkat c. Soc. d'Assur. Rossia [1929], Supt. Ct., 58 Clunet, 770, 771); France (Banque generale pour de Commerce etranger c. Jaudon [1924] Trib. civ. Seine, 52 Clunet, 419, 420; Cie. Nord de Moscou e. Phenix Espagnol [1928] Cour d'Appel, Paris, 56 Clunet, 119, 130; Soc. Vairon et Cie. c. Banque de Commerce de Siberie [1928] Sirey, Rec. Gen., Jour. du Pal., 161, Cour d'Appel, Bordeaux); and Switzerland (Banque internazionale de Commerce de Petrograd S. A. [Succursale de Geneve] c. Hausner [1924] Trib. Federal, 52 Clunet 488). It is also the position taken by the British courts in *Banque Internationale de Commerce de Petrograd* v. *Goukassow*, [1923], 2 K. B. 682, C. A., Scrutton, L. J. And in *Lazard Bros. & Co.* v. *Midland Bank, Ltd.*, [1933] A. C. 289, Lord Wright said:

"English Courts have long since recognized as juristic persons corporations established by foreign law in virtue of the fact of their creation and continuance under and by that law. Such recognition is said to be by the comity of nations. * * * But as the creation depends on the act of the sovereign state which created them, the

annulment of the act of creation by the same power will involve the dissolution and nonexistence of the corporation in the eyes of English law. The will of the sovereign authority which created it can also destroy it. English law will equally recognize the one, as the other, fact."

The same rule was recognized in *Russian Reinsurance Co.* v. *Stoddard, Jr., Supt. of Ins.*, 240 N. Y. 149, 154. But the Court of Appeals of New York, in recent cases, seems to have adopted what may be called the organic theory of juristic personality in opposition to the fictional theory which to this day has held a predominant position in the field of legal philosophy and judicial history and is the theory of our own law. Thus in *Petrogradsky M. K. Bank* v. *National City Bank* (253 N. Y. 23, 28 [1930]), the court said:

"We think the plaintiff is not dissolved, but is still a juristic person with capacity to sue."

In *Severnoe Securities Corp.* v. *London & Lancashire Ins. Co. Ltd.* (255 N. Y. 120, 122 [1931]), a Russian corporation, whose juristic personality was in dispute, was declared to retain "a pallid life as the shade or little more of its former self." *In Matter of People* (*Russian Reinsurance Co.*) (255 N. Y. 415, 425 [1931]), the Russian corporations were declared to be "still juristic persons." In *Salimoff & Co.* v. *Standard Oil Co.* (262 N. Y. 220, 225 [1933]) in speaking of Russian banking and insurance corporations, the court observed that—

"* * * corporations nonexistent in Soviet Russia have been, like fugitive ghosts endowed with extraterritorial immortality, recognized as existing outside its boundaries. The juristic person, the Russian corporation, dead in the country which created it, has received juridical vivification elsewhere."

This reasoning in the cases referred to coming before the Court of Appeals prior to the recognition of the Soviet Government, might have some theoretical justification, on the ground, possibly, of the technical continuity of the ancient Russian regime (*Rome* v. *Himely*, 4 Cranch, 272; *Gelston* v. *Hoyt*, 3 Wheat. 246; *Re Ambrose Light*, 25 Fed. 412) and the presumed illegality of the new (*Salimoff & Co.* v. *Standard Oil Co.*, 262 N. Y. 220, 224), a view, however, which has not passed unchallenged by high authority (Banque Internationale de Commerce de Petrograd S. A. [succursale de Geneve] c. Hausner [1924], Trib. Federal, Switzerland, 52 Clunet, 488). But that the logic of these cases should be extended, as is pretended (*Vladekavkazsky Ry. Co.* v. *N. Y. Trust Co.*, 263 N. Y. 369, 378), to acts whose legality we have tacitly approved when we recognized the government under whose authority they were done, is clearly a breach of the comity which one nation owes another. So singularly frail is the foundation of such reasoning when applied after an act, e. g., recognition, which necessarily must alter the judicial application of legal theories, that the New York Court of Appeals stands

alone on this proposition. In thus holding, it goes against the current of authority, and controlling principles of public international law which nations in relation to mutual friendliness must observe toward each other. Considering the matter as a question of fact, i. e., failure of proof of extinction—and not of legal theory, as the New York courts have done, the House of Lords of England held in 1925 that banking corporations were not dissolved by Russian nationalization decrees of December 14, 1917 (*Russian Commercial & Industrial Bank* v. *Comptior d'Escopte de Mulhouse*, [1925] A. C. 112, 134, L. H.; *Banque Internationale de Commerce de Petrograd* v. *Goukassow*, [1925] A. C. 150, H. L.).

Passing from the imponderables of juristic theory—corporate personality—to its ponderables—corporate assets—we invoke, in a truer and broader sense, the application of principles of public and private international law which must be made to coexist and to cooperate toward the adoption of a policy of substantial justice.

A practical result of the political soveignty of each country is the right of each to change its political institutions at discretion, and to legislate concerning its own interests according to its convenience and needs. Sec. Webster, Jan. 12, 1852; *King of Prussia* v. *Kueper's Admr.*, 22 Mo. 550 [1856]; *Dougherty* v. *Equitable Life Assurance Society*, 266 N. Y. 71, 83.

Thus, in the exercise of the right accorded to every State by the most widely accepted of all the principles of the law of nations, the Soviet Government nationalized the business of insurance in which these companies were engaged, and confiscated their property. No doubt exists that the operation of the laws of a foreign state often transcend, and necessarily so, their territorial orbit of action. What gives them force in other jurisdictions is the comity between nations which calls on the representatives of each sovereign state to observe a mutual respect in considering the effects of such of their official acts as project themselves into a foreign jurisdiction. *Bank of Augusta* v. *Earle*, 13 Pet. 519, 589; *Second Russian Ins. Co.* v. *Miller*, 297 Fed. 404, 409 (C. C. A. 2); *Hilton* v. *Guyot*, 159 U. S. 163; *Sedgwick Collins & Co.* v. *Rossia Ins. Co.*, [1926] 1 K. B. 1, 17, C. A. And, as a general rule, the acts of the recognized government when invoked by litigants in the forum of a friendly nation, will not be permitted to be impeached. "Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory." *Underhill* v. *Hernandez*, 168 U. S. 250, 252. The reason, of course, is that to permit the validity of those acts to be reexamined and perhaps condemned by the courts of another would very certainly imperil the amicable relations between governments and vex the peace of nations. *Oetjen* v. *Central Leather Co.*, 246 U. S. 297, 304.

Two possible grounds exist for refusing to give the Soviet decree extraterritorial application. One is public policy; the other is its penal character—assuming it is penal. The conception embodying the idea of public policy is wrapped in considerable vagueness as is generally admitted. *Hadden* v. *Barney*, 5 Will. 107; *Egerton* v. *Brownlow*, 4 H. L. Cas. 1, 123. The view expressed concerning public policy by these, the highest tribunals of England and the United States, warn against the danger of taking uncertain and unsatisfactory concepts as the deciding yardstick according to which the legislation of the recognized Government of Russia is to be accepted or rejected in our courts. Considerations of an international character urge us to accept with great reluctance, a local conception of public policy as the determining factor in the relations between friendly nations. Is the confiscatory legislation of a recognized government, which produces effects only within its own jurisdiction, and respecting its own nationals or foreigners, per se, against public policy? Certainly not. Speaking of the confiscatory legislation of the State of Georgia in 1782, which expropriated the property of British loyalists, and particularly that of Wright, the provincial governor, during our Revolutionary period, the Lord Chancellor of England, as far back as 1788, said in *Wright* v. *Nutt* (1. H. Blackstone, 136, 149, 126 Repr. 83, 89):

"It may be a question for private speculation, whether such a law made in Georgia was a wise or an improvident one, whether a barbarous or civilized institution. But here we must take it as the law of an independent country, and the laws of every country must be equally regarded in courts of justice here, whether in private speculation they are wise or foolish."

This original principle has been accepted without question in subsequent adjudications involving our own nationals and nationals of the country putting such legislation into effect. *Underhill* v. *Hernandez*, 168 U. S. 250; *Oetjen* v. *Central Leather Co.*, 246 U. S. 297; *Murray* v. *Vanderbilt*, 39 Barb. 140, 146.

Is such legislation against public policy if it seeks extraterritorial application? Gratuitous expressions in the courts of New York, England, and France, give the impression that they would hold—if the occasion arose—that any infringement of the right of private property, which operates upon property situated in those jurisdictions, would be against their public policy.

But in close analysis, it will be found that many of these expressions were unnecessary to the decision of the actual question before the courts and they do not apply to the specific problem before us. The cases there referred to concern the protection of rights acquired locally, such as the payment of debts, the enforcement of contracts, and the right of succession under the local law, all of which come properly under the operation of well established principles of private

international law. On the other hand, there is much authority in the decisions to the effect that there is nothing in the confiscatory legislation of a recognized government which can be against the public policy of the recognizant State, even when the legislation of the former is judged exclusively according to the local conceptions of the latter rather than by general standards. While there is a divergence of opinion on the question whether the Soviet decrees of nationalization are contrary to public policy, it is well to bear in mind the admonition of the Supreme Court in *Hedden* v. *Berney*, *supra*, against the practice of permitting judicial tribunals to decide according to their unchecked discretion what should be the public policy of a nation, particularly on a question of international concern. The known practice of the executive department of the nation pronouncing the public policy of the nation should be controlling upon the courts in such instances.

The public policy of the country may be declared in the Constitution and, if that instrument is silent, the three departments of the Government have the power within their respective spheres, to declare what the public policy is; the executive, by proclamation or some other authoritative act; the legislative, by statute; the judiciary by judicial decisions. The chief executive, acting as the constitutional organ of international relations, may declare, in the course of the administration of the affairs of the Nation, its public policy with respect to any question within his legitimate competency. The act of recognition of a foreign government may import the equivalent of a definite declaration of policy which the courts would be bound to notice. Should we for any reason disapprove of the policies of a foreign government which seeks our recognition, we would be within our rights in declining to recognize it on that ground solely. In *A. M. Luther* v. *James Sager & Co.*, [1921] (3 K. B. 532); it appears that the Soviet Government had been extended *de facto* recognition by the British Government. It was contended that the confiscatory decrees of that Government were in their nature "so immoral, and so contrary to the principles of justice" as recognized in England, that the courts should disregard them, Lord Scrutton saying:

"Should there be any government which appropriates other people's property without compensation, the remedy appears to be to refuse to recognize it as a sovereign state. Then the courts could investigate the title without infringing the comity of nations. But it is impossible to recognize a government and yet claim to exercise jurisdiction over its person or property against its will."

While we have said that recognition is retroactive and that its effect is to preclude the tribunals of the recognizant state from questioning the validity or legality of the actions of the government recognized, and that it invalidates, so far as concerns the tribunals of the recognizant state, transfers of property and other transactions which before recognition would have been treated as invalid by

those tribunals (1 Oppenheim, International Law, 4th Ed. [1928] § 75*d*, p. 155; Hervey, The Legal Effects of Recognition in International Law, [1928] 82, 87), an important qualification of this general principle must be formulated, and that is, that as in the interregnum between the establishment of a foreign government in power and its recognition by this Government, it cannot be said to be entitled to any comity and its legislation to any respect (*Rose* v. *Himely*, 4 Cranch, 272; *Gelston* v. *Hoyt*, 3 Wheat. 246) at our hands during such period whatever has been done in the courts, with legal finality, must be regarded as *res judicata* and valid as against the world. So that in establishing a new policy or changing an old one, the act of recognition must be understood to have effect only from the date it actually takes place as to questions which are *res judicata* and irrevocable, but as to questions which are still pending or not affected with litigation, or which are political in nature, the effect must be understood as from the commencement of such government. Therefore, during the interregnum, the corporations were correctly regarded here (because of the refusal of our courts on grounds of public policy to give effect to the Soviet legislation), as a juristic person, and as such subject to the application of the principles of private international law, the most frequently invoked in these Russian cases having been the *lex rei situs* and the *lex loci contractus*. *Salinoff & Co.* v. *Standard Oil Co.*, 262 N. Y. 220; *Sedgwick Collins & Co.* v. *Rossia Ins. Co.*, [1926] 1 K. B. 1; *In re Russian Bank for Foreign Trade*, [1933] Chancery 745; *Egger* v. *La Baloise-Vie*, [1924] Triv. civ. Seine, 52 Clunet, 1006.

In any litigation between private individuals putting in opposition the laws of respective countries the conflict must be resolved according to the rules of private international law. The principle which during such interregnum applied to the branch offices of these corporations in this country, was clearly formulated in the Treaty on International Commercial Law of Montevideo [1889] (art. 6) as follows:

"The branches or agencies established in a state by a corporation domiciled in another, shall be considered as domiciled in the place where they do business and subject to the jurisdiction of the local authorities regarding the business which they may do."

Under this qualification of the general principle of the retroactivity of the act of recognition, the rights which the Soviet Government acquired here with respect to these companies and their assets under the decree of nationalization must date only from the date of actual recognition—that is November 16, 1933; but as to what occurred before, the rights of the Soviet Government must be understood as subordinate to and regulated by the principles of private international law to the extent which those principles govern the rights of our nationals or inhabitants acquired under our laws in the course of business with the companies prior to actual recognition. Anything adjudicated by our courts subsequent to the date of actual recognition must, therefore, be treated as void.

When, therefore, the Soviet Government was recognized, the courts lost all right to continue to inject their prerecognition conceptions of public policy into the international panorama in manifest derogation of the express determination of the political department and the clear juridical implications of the act of recognition. As said by Lord Scrutton, L. J., in *A. M. Luther* v. *James Sagor & Co. supra:*

"But it appears a serious breach of international comity, if a state is recognized as a sovereign independent state, to postulate that its legislation is 'contrary to essential principles of justice and morality.' Such an allegation might well with a susceptible foreign government become a casus belli; and should in my view be the action of the Sovereign through his ministers, and not of the judges in reference to a state which their Sovereign has recognized. The English courts act on the rule 'that an intention to take away the property of a subject without giving him a legal right to compensation for that intention is expressed in unequivocal terms': *Central Control Board* v. *Cannon Brewery Co.* If it were they must give effect to it, and can hardly be more rigid in their dealings with foreign legislation. Individuals must contribute to the welfare of the state, and at present British citizens who may contribute to the state more than half their income in income tax and super tax, and a large proportion of their capital in death duties, can hardly declare a foreign state immoral which considers (though we may think wrongly) that to vest individual property in the state as representing all the citizens is the best form of proprietary right. I do not feel able to come to the conclusion that the legislation of a state recognized by my Sovereign as an independent sovereign state is so contrary to moral principle that the judges ought not to recognize it. The responsibility for recognition or nonrecognition with the consequences of each rests on the political advisers of the Sovereign and not on the judges."

The Russian decrees extinguished the lives of these companies and appropriated their property and general assets. If those decrees were effective to extinguish their lives abroad as well as at home, why should it not be effective also to take over their property and assets abroad where the companies had branches, to as full an extent as at home, if our political department has made a public declaration of policy with respect to such legislation which validates it, and the rights of those who have claims against the corporations are safeguarded by our courts under the qualification of the principle of retroaction indicated and the established principles of private international law? When, then, our Government recognized that of Russia, it also recognized its legislation. By that legislation, the Government of the Soviets ended the lives of these corporations and took over their assets. That legislation this court is bound to recognize and apply since November 16, 1933, as to matters *res judicata*, in as full a measure as our political department has recognized it, and we are foreclosed from further questioning it by the very act of

recognition. Recognition changes a policy of official disfavor into an attitude of graceful acquiescence. To impeach this legislation now in the courts as being against our public policy would clearly trench upon the sphere of the executive who has already decided the matter in a manner that concludes our courts.

As to the question whether the Russian decree is of a penal character, I do not hesitate to say that I cannot so regard it. A statute is penal if it inflicts a penalty for the violation of some of its provisions (*Huntington* v. *Attrill* (1893) A. C. 150, 156, H. of L.; 3 Bouvier's Law Dictionary, 3rd ed., by Rawle, 1914, p. 2551), or, if it fixes upon a wrongdoer any extraordinary liability in favor of the person wronged, not limited to the damages suffered (*Huntington* v. *Attrill*, 146 U. S. 657, 667). It is evident that the reported cases do not indicate that they are vitiated with the criminal or tortious elements which these definitions involve. In *Baglin* v. *Cusenier*, 221 U. S. 580, and *Lecouturier* v. *Roy* (1910) A. C. 262, which have been cited by counsel as authority against the retroactivity of the supposedly confiscatory legislation of the French Government, must be considered in the light of the French law—the Loi relative au contrat d'association, of July 1, 1901, 63 Bull. des Lois, 12 c. ser., II Sem. (1901), pt. princ., p. 1273)—art. 19 of which provides:

"The provisions of art. 463 of the penal code shall apply to offenses contemplated by the present law."

That law clearly fell within the terms of the first portion of our definition.

The right of the United States to sue in the national court has been questioned on the ground that the balances claimed by appellant are now, as it is alleged in process of adjudication in the state courts, and the majority opinion turns upon this question. To uphold the jurisdiction of the state courts, and avoid giving extraterritorial effect to the Soviet decrees, the majority opinion has taken the unwarranted position that the effect of the dissolution of the insurance company upon its assets was to debase the sovereignty of the state to the status of the corporation. The majority opinion reads:

"Consequently we must for present purposes take the Soviet Government to have become to all intents and purposes the Russian insurance corporation in Russia which owned the deposit in New York subject to the fulfillment of the conditions upon which the deposit was made with the New York Superintendent of Insurance."

This position, of course, reverses law, logic, and fact. It reverses law because the dissolution of the corporation and the nationalization of its property did not lower the Soviet Government to the plane of the private litigant without its express consent; it reverses logic, because such dissolution did not assimilate the Russian Government with a corporation which was legally nonexistent; and it reverses fact because such nationalization could not involve a debasement of sovereignty. On the contrary, the dissolution and nationalization had the effect of absorbing the assets of the corporation into

the rest of the public assets and placing them beyond the reach of the processes of the tribunals of foreign states. Art. 3, §2 of the Constitution, says: "the judicial Power shall extend * * * to Controversies to which the United States shall be a Party."

Section 41 of the Judicial Code gives the District Courts original jurisdiction of "all suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue".

The Government is clothed with full juristic capacity to come into its own courts, either as a party plaintiff or an intervenor, to protect or claim its lawful rights. Of this there can possibly be no doubt. But it is said that since the State courts first acquired jurisdiction and control over the *res*, the United States courts lack authority, under the doctrine of jurisdictional priority repeatedly announced by the Supreme Court (*Lion Bonding Co.* v. *Karatz*, 262 U. S. 77, 88; *Harkin* v. *Brundage*, 276 U. S. 36, 43; *Wabash R.* v. *Adelbert College*, 208 U. S. 38; *Farmers Loan & Trust Co.* v. *Lake Street Elevated R. Co.*, 177 U. S. 51, 61; *Byers* v. *McAuley*, 149 U. S. 608, 614; *Merritt et al.* v. *Amer. Steel-Barge Co.*, 79 Fed. 228 [C. C. A. 8]), to entertain these suits and to proceed therein as prayed. To this general principle which, as has been said, is a principle "of right and law, and therefore, of necessity" (*Covell* v. *Heyman*, 111 U. S. 176, 182), and "essential to the dignity and just authority of every court" (*Buck* v. *Colbath*, 3 Wall 334), I, of course, subscribe. But I perceive no conflict between this salutary rule and the suits brought by the United States in its own courts; if the principles of the retroactivity of recognition and the extraterritoriality of the legislation of a foreign government within the limits already indicated, are regarded in the proper light, and in that light applied to the questions before us.

Upon matters which were *res adjudicata* on November 16, 1933—the date of recognition of the Soviet Government—under principles of private international law underlying questions of this character, such recognition can have no disturbing effect; upon matters which were pending or not decided with the authority of finality on the date of recognition and which involved the properties or assets of nationalized Russian companies not affected with the application of principles of private international law, it is clear that whatever was done in the state courts was done at the risk of a declaration of nullity, for the courts should have known that they were dealing with the properties or assets of a foreign government whose confiscatory legislation we have approved by the very fact of recognition and by taking an assignment comprising in many instances the fruits of such legislation. Therefore, on the date of recognition the state courts lost jurisdiction and control of the properties and assets in question. The United States was at liberty to proceed in its own courts, without ousting the state courts of jurisdiction, or, of delaying or obstructing the state courts in the exercise of their jurisdiction, or of leading to a conflict of authority between the Federal and the State

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, COMPLAINANT-APPELLANT

against

BANK OF NEW YORK AND TRUST COMPANY, DEFENDANT-APPELLEE

Before MANTON, AUGUSTUS N. HAND, and CHASE, Circuit Judges

In equity. Appeal from a decree of the District Court for the Southern District of New York dismissing the bill of complaint and denying plaintiff's motion for an injunction pendente lite. Affirmed.

Martin Conboy, United States attorney; Francis H. Horan and Edward J. Ennis, assistant United States attorneys.

Emmet, Marvin & Martin, solicitors for defendant-appellee, Bank of New York & Trust Co.; Frederick B. Campbell, Paul C. Whipp, Lounsbury D. Bates, of counsel.

Cabell, Ignatius, Lown & Blinken, solicitors for intervenor; Hartwell Cabell, of counsel.

Samson Selig, amicus curiae; Samson Selig and George D. Bradford, of counsel.

Engelhard, Pollak, Pitcher, Stern & Clarke, attorneys for judgment-creditors of Moscow Fire Ins. Co.; Walter H. Pollak, Murray I. Gurfein, of counsel.

CHASE, Circuit Judge.

This is an action in equity for an accounting. The suit was commenced August 22, 1934. It is alleged in the bill that the Moscow Fire Insurance Company of Moscow, Russia, was a corporation organized under the laws of the State of Russia to engage in the busines of fire insurance and that, until dissolved, it was duly authorized in accordance with the laws of the State of New York to do business in that State; that in compliance with the New York law it had deposited with the New York Superintendent of Insurance certain cash, securities, and "other items of value" as a fund out of which the claims of the domestic creditors of the corporation should be paid and that it had done business in New York; that in 1917 and 1918 it was dissolved by decrees of the Russian State "and all of its right, title, and interest and all the right, title, and interest of all of its stockholders in its property, including the deposits hereinbefore mentioned with the Superintendent of Insurance of the State of New York, were confiscated and appropriated by the said Russian State"; that by April 18, 1933, all the claims of domestic creditors to the fund so deposited had been satis-

fied and the New York Superintendent of Insurance had, pursuant to an order of the Supreme Court of New York, New York County, deposited with the defendant, as the agent or depository of the said Moscow Fire Insurance Company, the remainder of said fund consisting of cash and securities of the value of $1,080,399.54 upon the condition that it was not to be withdrawn except upon the order of a court of competent jurisdiction; that the defendant had possession of the fund so deposited or of the avails thereof. It was further alleged that on or about November 16, 1933, the Russian State assigned all of its right, title, and interest in the deposit to the plaintiff, who is the sole owner entitled to immediate possession, and who had demanded the fund of the defendant; that the demand had been refused and that the fund was being wrongfully withheld from the plaintiff by the defendant. It was further alleged that the defendant held the fund as trustee for the plaintiff who had no adequate remedy at law. An injunction to keep the fund in the possession of the defendant pendente lite was a part of the relief sought.

The defendant did not answer but moved to dismiss on the ground that the bill stated no cause of action. The plaintiff's motion for an injunction was denied and the defendant's motion to dismiss granted.

Although the appellee has argued at length that the assignment did not convey to the plaintiff any title to or interest in the fund for the reason that (1) the assignor had no title or interest not based upon confiscation, which is a concept so repugnant to our public policy that we will not recognize and enforce it; and (2) that the assignment in terms did not cover the fund, we think the order must be affirmed regardless of whether there is any merit in the argument on these two points. For present purposes we will assume the assignment to be sufficient to transfer to the plaintiff whatever right to an accounting by the defendant the Russian State, the assignor, had. See *State of Russia* v. *Nat. City Bank*, 69 Fed. (2d) 44.

We take judicial notice of the recognition of the Soviet Government by the United States on November 16, 1933, which was the day on which the assignment here relied upon was made. *Underhill* v. *Hernandez*, 168 U. S. 250. By that act of recognition the decrees under which this Russian corporation was dissolved and its property confiscated by the Soviet Government became as valid as they would have been had they been passed at a time when we had already recognized the Soviet Government. The effect of recognition was to that extent retroactive. *Ricaud* v. *American Metal Co.*, 246 U. S. 304; *Oetjen* v. *Central Leather Co.*, 246 U. S. 297. When our Government recognized that Government the public policy of this country to recognize the validity of Soviet decrees within Soviet territory was established. No one will question the power of the Government of the domicile of a corporation to destroy what it has created. *Bank of Augusta* v. *Earle*, 13 Pet. 519, 587; *Head* v. *Providence Ins. Co.*, 2 Cranch 127, 168. When the now recognized Soviet Government issued its decrees to that effect this corporation was

dead. *Oklahoma Gas Co.* v. *Oklahoma*, 273 U. S. 257; *The Greyhound*, 68 Fed. (2d) 832 (C. C. A. 2). There can be no serious dispute that its property and all its corporate rights in Russia were subject to such disposition as actually took place in accordance with Russian law. The Russian State obviously could, and this record shows that it did, confiscate everything belonging to this corporation within the confines of Russia. It could, and did, acquire for itself every right the corporation in Russia possessed. It became the corporation there so far as we are now concerned. It had all its property and rights as fully as though the corporation had lawfully assigned them to it before dissolution. To that extent our public policy as to confiscatory decrees, so far as it may be expressed by our courts, is of no moment. When the executive branch recognized the Soviet Government, the judicial branch became bound to recognize the validity of Soviet decrees in Soviet territory from the beginning of the Soviet regime. *Oetjen* v. *Central Leather Co.*, *supra*. See also, *Lazard Bros. & Co.* v. *Midland Bank, Ltd.* (1933), A. C. 289, H. of L., for the rule in England. Consequently we must for present purposes take the Soviet Government to have become to all intents and purposes the Russian insurance corporation in Russia which owned the deposit in New York subject to the fulfillment of the conditions upon which the deposit was made with the New York Superintendent of Insurance.

For present purposes, also, we may assume arguendo that the present plaintiff has by assignment acquired all the rights in and to the deposit which the Soviet Government took in Russia from the corporation which made the deposit. That is the best position the plaintiff can claim and in view of the disposition which in our opinion now must be made of this appeal we think it would be inadvisable, as it is unnecessary, to express our opinion on the merits as to this point. It is enough that we assume without deciding that the plaintiff has all the rights which the depositing corporation would, if now in existence, possess. The transfer of those rights to the plaintiff did not enlarge them because the assignee happened to be the United States. The United States has no greater rights than those of an assignor. *United States* v. *Buford*, 3 Pet. 12, 30; *Ritter* v. *United States*, 28 Fed. (2) 265. Though sovereign powers have been dealing with each other they have been dealing in private causes of action and the plaintiff is simply attempting to enforce, as assignor, the claim of a Russian corporation to what remains of a deposit it made in this country.

As has already been stated this remainder of the original fund has been placed on deposit with the defendant bank pursuant to an order of the New York court. It is now pertinent to state further that the record shows that this order of the New York court was made in the course of liquidation proceedings brought and prosecuted by the New York Superintendent of Insurance in accordance with the New York law in New York courts within whose jurisdiction the fund actually was. On August 11, 1931, the New York Supreme

Court acting in accordance with a decision of the New York Court of Appeals (see *In re People-Moscow-Fire Insurance Co. of Moscow, Russia*, 255 N. Y. 433) ordered the deposit now in controversy made in the defendant bank. Rather extensive liquidation proceedings have been conducted in the New York courts which it will now serve no good purpose to relate in detail. The important matter is that before this action was commenced the fund in controversy had been taken into the custody of the New York court and has ever since remained in its custody. The sole purpose of the proceeding in the New York court was to liquidate the fund and distribute it according to its laws. To that end, the State suit was in rem. During its prosecution the remainder of the fund consisting of cash and securities left after domestic creditors had been paid was actually deposited with this defendant under an order of the court which controlled within its own proper jurisdiction the proceedings and the fund in liquidation. That being so this suit cannot be maintained to deprive the State court of its previously acquired jurisdiction of the res in its custody. *Covell* v. *Heyman*, 111 U. S. 176; *Harkin* v. *Brundage*, 276 U. S. 36; *Lion Bonding Co.* v. *Karatz*, 262 U. S. 77; *Wabash R. R. Co.* v. *Adelbert College*, 208 U. S. 38; *Farmers' Loan & Trust Co.* v. *Lake St. Elevated R. Co.*, 177 U. S. 51. Though the Federal courts have original jurisdiction of suits at law or in equity in which the United States is the plaintiff such jurisdiction is not exclusive. *People's Trust Co.* v. *United States*, 23 Fed. (2) 381; *Merryweather* v. *United States*, 12 Fed. (2) 407. Were the proceedings in the New York court one for a personal judgment only the result would be otherwise for the rule is that a prior action in personam does not prevent the maintenance of an action for the same cause in another jurisdiction. At least until the matters in issue become res adjudicata. *Kline* v. *Burke Const. Co.*, 260 U. S. 226. Even then the effect is of a different nature, being what is attributable generally to such a plea and its proof. Nor is there any question here of the personal liability of the defendant apart from what may attach solely from the fact that a fund in the custody of the State court to which the plaintiff makes claim has been placed in its possession under the order of the State court. There being no such separate personal liability there is no room for the application of the rule expressed in *Waterman* v. *Canal-Louisiana Bank & Trust Co.*, 215 U. S. 33, that rights in personam within the Federal equity jurisdiction will be determined and enforced when by so doing property in the custody of the State court is not seized and controlled. Compare, *Byers* v. *McAuley*, 149 U. S. 608.

The real status of the plaintiff as only a claimant to the fund is at least emphasized by the fact appearing of record that it did on August 13, 1934, file proof of its claim in the State court action for the entire $1,080,399.54 and interest. Its claim was based upon the facts relied upon in this suit brought but nine days later. Apparently the claim was not pressed. Under the circumstances already related the jurisdiction of the New York court should be respected.

courts (*Merritt* v. *American Steel-Barge Co.*, 79 Fed. 228 [C. C. A. 8]). In other words, and as a limitation to the principle of jurisdictional exclusion on the grounds of priority, the "possession of the officer of court" was discharged (*Buck v. Colbath*, *supra*) by the act of recognition, as to those matters or claims not affected with the application of principles of private international law. It was, therefore, within the competency of the district courts to entertain the suits filed and to issue the injunctive relief prayed by the United States, since § 265 of the Judicial Code, which forbids the Federal courts "to stay proceedings in any court of a state, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy", must be construed in connection with § 262 which authorizes the Federal courts "to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law." *Kline* v. *Burke Constr. Co.*, 260 U. S. 226, 228. It may not be maintained that, if after November 16, 1933, the State courts lost jurisdiction over the assets of the recognized Russian Government, any injunction issuing from a court of the United States would act to stay proceedings in any court of the state within the meaning of the statute. No proceedings can be stayed, no ousting of jurisdiction or custody can occur, no delay or obstruction in the exercise of jurisdiction can take place, no conflict of authority can happen, where lawful jurisdiction is wanting by operation of law.

The decrees should be reversed.

United States Circuit Court of Appeals, Second Circuit

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the court rooms in the Post Office Building in the City of New York, on the 27th day of May, one thousand nine hundred and thirty-five.

Present: Hon. MARTIN T. MANTON, Hon. AUGUSTUS N. HAND, Hon. HARRIE B. CHASE, Circuit Judges.

UNITED STATES, PLAINTIFF-APPELLANT

vs.

BANK OF NEW YORK AND TRUST COMPANY, DEFENDANT-APPELLEE

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof it is now hereby ordered, adjudged, and decreed that the decree of said District Court be and it hereby is affirmed.

It is further ordered that a mandate issue to the said District Court in accordance with this decree.

WM. PARKIN, *Clerk.*

(Endorsement on cover:) United States Circuit Court of Appeals, Second Circuit. *United States* vs. *Bank of New York and Trust Company.* Order for mandate. United States Circuit Court of Appeals, Second Circuit. Filed May 27, 1935. William Parkin, clerk.

United States of America, Southern District of New York

I, William Parkin, clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 226, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of United States, plaintiff-appellant, against Bank of New York and Trust Company, defendant-appellee, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 27th day of June, in the year of our Lord one thousand nine hundred and thirty-five, and of the independence of the said United States the one hundred and fifty-ninth.

[SEAL] WM. PARKIN, *Clerk.*

U. S. GOVERNMENT PRINTING OFFICE: 1935

228 Supreme Court of the United States

Order allowing certiorari

Filed October 14, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

229 In Supreme Court of the United States

Stipulation and addition to record

Filed Oct. 30, 1935

Stipulation

It is hereby stipulated by and between counsel for the United States, counsel for the Bank of New York and Trust Company and counsel for the Assecuranz-Union von 1865, that the petition of intervention of the Assecuranz-Union von 1865 filed in the District Court of the United States for the Southern District of New York, together with the order of that court granting leave to intervene, certified copies of which papers are annexed hereto, may be included in and printed as part of the transcript of record in this court in the above-entitled cause.

Dated: October 29, 1935.

STANLEY REED,
Solicitor General, Counsel for the United States.
FREDERICK B. CAMPBELL,
Counsel for the Bank of New York and Trust Company.
HARTWELL CABELL,
Counsel for Assecuranz-Union von 1865.

230 United States District Court, Southern District of New York

In Equity No. 78–377

UNITED STATES OF AMERICA, COMPLAINANT,

against

BANK OF NEW YORK & TRUST COMPANY, DEFENDANT

This cause coming on to be heard on the application of Assecuranz Union von 1865 for leave to intervene in the above-entitled action and the application having been duly considered, and it appearing

to the Court that the said Assecuranz Union von 1865 is a party interested in the funds here in controversy, it is

Ordered, adjudged, and decreed that Assecuranz Union von 1865 has leave to intervene herein and to that end may appear in this action and file its petition of intervention within twenty days from the date of this order in the same manner and with like effect as if named in the original complaint as a party defendant and that its said petition of intervention be considered as an answer to complainant's complaint, and it is

Further ordered that the Clerk of this Court make the record of the entry of this order nunc pro tunc as of the date December 18, 1934, and it is

Further ordered that this order and entry thereof be without prejudice to any proceedings heretofore had in this cause.

Dated, New York, N. Y., January 31, 1935.

ALFRED C. COXE, *U. S. D. J.*

A True Copy:

[SEAL] CHARLES WEINER, *Clerk.*

230½ Please take notice that an order of which the within is a copy was duly entered and filed herein in the office of the Clerk of the United States District Court for the Southern District of New York at the Old P. O. Bldg., Borough of Manhattan, New York City, on the 1st day of February 1935.

Dated: New York, February 2, 1935.

CABELL, IGNATIUS, LOWN & BLINKEN,
Attorneys for Assecuranz Union von 1865,
150 Broadway, Borough of Manhattan, New York City.

Copy received 2/4/35.

EMMET, MARVIN & MARTIN,
Solicitors for Defendant.
By FREDERICK B. CAMPBELL,
Of Counsel.

Copy recpt. Feb. 4/35.

MARTIN CONBOY,
U. S. Atty.

231 United States District Court, Southern District of New York

UNITED STATES OF AMERICA, COMPLAINANT

against

BANK OF NEW YORK AND TRUST COMPANY, DEFENDANT

Petition of intervention of Assecuranz Union von 1865

Leave having been granted to the Assecuranz Union von 1865 by order of this Court dated January 31, 1935, and entered herein, to intervene in this action, comes now said Assecuranz Union von 1865 and files its intervention and for its cause of action alleges as follows:

I. The intervenor Assecuranz Union von 1865 is a foreign insurance corporation organized and authorized to do business under and by virtue of the laws of Germany with its principal place of business in the City of Hamburg.

II. That prior to the commencement of this action and on or about the 10th day of February, 1931, in a special proceeding entitled "In the Matter of the Application of the People of the State of New York, by James A. Beha, as Superintendent of Insurance, Respondent, for an order to take possession of the property of the Moscow Fire Insurance Company of Moscow, Russia, Appellant", an order was entered in the Court of Appeals of the State of

232 New York, directing the transfer or deposit of the surplus funds of the Moscow Fire Insurance Company remaining after the payment of all of its American creditors to one Paul Lucke as Conservator of the assets of the said Company; or, in the alternative, to a trust company.

III. That in accordance with said order of remittitur of the said Court of Appeals, the Supreme Court of the State of New York at a Special Term held in and for the County of New York, at the County Court House in the Borough of Manhattan, City of New York, on the 11th day of August, 1931, entered an order upon said remittitur from the Court of Appeals, which said order among other things provided as follows:

"(1) That the order and judgment of the Court of Appeals dated February 11, 1931, be made the order and judgment of this Court.

"(2) That the injunction contained in the liquidation order herein, dated and entered August 8, 1925, as resettled by order dated and entered September 11, 1925, be forthwith vacated and dissolved.

"(3) That all claims filed with the Superintendent of Insurance before the date of this order be determined within the instant liquidation proceeding according to law.

"(4) * * *

"(5) That the Superintendent of Insurance * * * is hereby directed to release, pay, transfer and deliver said surplus assets to

the Bank of New York and Trust Company of No. 48 Wall Street, New York City, as the agent or depositary of said Moscow Fire Insurance Company of Moscow, Russia, and of the said Paul Lucke as surviving director and conservator upon the filing with the Clerk of this Court of a written stipulation of said Moscow Fire Insurance Company and of said Paul Lucke as surviving director and conservator of said Company that such surplus assets or funds will not be withdrawn except upon the order of a Court of competent jurisdiction."

233 IV. That in accordance with said order so entered in the Supreme Court of New York County, the Superintendent of Insurance did on or about the 18th day of April 1933, transfer and pay over to the Bank of New York and Trust Company the sum of $1,080,399.54, being the residue of the American assets of said Moscow Fire Insurance Company after the payment of all claims and expenses theretofore allowed and incurred by the said Superintendent of Insurance in the liquidation of said Company.

V. That thereafter there was instituted in the Supreme Court of New York County a certain suit by the Moscow Fire Insurance Company of Moscow, Russia, and Paul Lucke as sole surviving director of the Moscow Fire Insurance Company and as conservator of its property against the Bank of New York and Trust Company as agent or depositary of said Moscow Fire Insurance Company of Moscow, Russia, and of said Paul Lucke as surviving director and against sundry corporations, firms and individuals, among them being the intervenor Assecuranz Union von 1865.

VI. That the purpose of said suit was the hearing and determining of claims against the Moscow Fire Insurance Company which had been filed or which would be presented for the purpose of having the same paid out of the said residue of said assets.

VII. That the intervenor Assecuranz Union von 1865 duly filed its claim in said proceedings.

234 VIII. That an order was made on or about the 13th day of October, 1933 in said Supreme Court appointing James F. Donnelly, Esq., Referee, to hear and determine all the issues in said action, among others the validity of the claim of the intervenor Assecuranz Union von 1865 against the assets of said Moscow Fire Insurance Company.

IX. That on due notice various and sundry hearings were had by the said Referee, in the course of which the intervenor Assecuranz Union von 1865 presented its proof of claim against the said assets.

X. That on or about August 22, 1934, the said Referee filed his report as Referee, and that in said report he found that the intervenor Assecuranz Union von 1865 was entitled to a judgment against the said assets in the sum of $4,506.56, which said sum includes the interest allowed by the said Referee.

XI. That a judgment for said sum in favor of the intervenor Assecuranz Union von 1865 was entered upon said report on or about the

22nd day of August 1934 and that by reason of the premises the intervenor Assecuranz Union von 1865 has a charge and lien on the funds here in controversy.

FOR ITS ANSWER TO THE COMPLAINT HEREIN THIS INTERVENOR ALLEGES:

XII. Denies each and every allegation contained in paragraphs marked "4" and "8" of the complaint herein.

XIII. Denies any knowledge or information sufficient to
235 form a belief as to each and every allegation contained in paragraph marked "6" of the complaint herein.

XIV. Except that the intervenor Assecuranz Union von 1865 has no knowledge or information sufficient to form a belief with respect to the allegations of complainant's demand and defendant's refusal as set forth in paragraph marked "7" of the complaint herein, this intervenor denies each and every other allegation in said paragraph "7" contained.

XV. This petition of intervention is filed in subordination to and in recognition of the propriety of the bill of complaint filed in this cause, if the complainant the United States of America has any right, title, claim, or interest in and to the cash, securities and other assets described in the complaint herein, but this intervenor denies that said complainant has any such right, title, interest, or claim to the aforesaid cash, securities and other assets and alleges that it (the intervenor) has a charge and lien upon said cash, securities, and assets as hereinbefore more fully set out.

Wherefore the intervenor, Assecuranz Union von 1865 prays that the charge and lien claimed by it herein on the cash, securities, and assets described in the complaint be established and declared to be a valid one, and for such other relief, legal or equitable, as this intervenor may be entitled to.

HARTWELL CABELL,
Solicitor for Assecuranz Union von 1865, Intervenor,
Office & P. O. Address, 150 Broadway, New York City.

236 STATE OF NEW YORK,
County of New York, ss:

HARTWELL CABELL, being duly sworn, deposes and says that he is the Solicitor for Assecuranz Union von 1865, the intervenor, in the foregoing action; that the foregoing petition of intervention is true to the knowledge of deponent except as to the matters which are therein stated to be alleged on information and belief and as to those matters he believes it to be true.

That the reason why this verification is made by deponent and not by the intervenor is that said intervenor is a foreign corporation and that there are no officers in the County wherein deponent has his office; that the source of the deponent's information and the grounds of his belief consist of correspondence in the possession of

deponent and the public records on file in the Supreme Court of the State of New York in and for the County of New York.

HARTWELL CABELL.

Sworn to before me this 11th day of February, 1935.

[NOTARY SEAL] JOSEPH S. CATALANO,
Notary Public.

Comm. expires Mar. 30, 1935.

A true copy:

CHARLES WEISER, *Clerk.*

[File endorsement omitted.]

Filed Oct. 30, 1935.

(Endorsement on cover:) File nos. 39,749, 39,750, 39,751. U. S. Circuit Court of Appeals, Second Circuit. Term No. 195. The United States of America, Petitioner, vs. Bank of New York and Trust Company. Term No. 196. The United States of America, Petitioner, vs. President and Directors of the Manhattan Company. Term No. 197. The United States of America, Petitioner, vs. Louis H. Pink. Petition for writs of certiorari and exhibits thereto. Filed July 1, 1935. Term Nos. 195 O. T. 1935, 196 O. T. 1935, 197 O. T. 1935.

U. S. GOVERNMENT PRINTING OFFICE: 19